



**The United Republic Of Tanzania**

**Ministry Of Natural Resources And Tourism**

**Wildlife Division**



# **Procedures For Communities To Enter Into Joint Ventures In Wildlife Management Areas**

**July 2000**

**Prepared by:**

**Vernon Booth  
George Nangale  
Hamudi Majamba**



**Financed by:**

**EPIQ – USAID/Tanzania and GTZ–Tanzania**

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# Acronyms

|         |   |
|---------|---|
| AA      | Authorized Association  |
| AWF     | African Wildlife Foundation   |
| CBC     | Community-Based Conservation  |
| CBNRM   | Community Based Natural Resource Management                                       |
| DC      | District Council  |
| EPIQ    | Environmental Policy and Institutional Strengthening Indefinite Quantity Contract |
| GCA     | Game Control Area   |
| GMP     | General Management Plan   |
| GoT     | Government of Tanzania  |
| LGA     | Local Government Authority  |
| LUP     | Land Use Plan   |
| MBOMIPA | Matumzi Bora Maliasili Idodo na Pawaga  |
| MoU     | Memorandum of Understanding   |
| NGO     | Non-government Organization   |
| NFM     | Natural Forest Management   |
| NRM     | Natural Resource Management   |
| NP      | National Park   |
| PA      | Protected Area  |
| PAC     | Problem Animal Control  |
| SANP    | South African National Parks  |



|        |  |
|--------|--|
| TANAPA | Tanzania National Parks                            |
| ToR    | Terms of Reference                                 |
| USAID  | United States Agency for International Development |
| VC     | Village Council                                    |
| VGS    | Village Game Scouts                                |
| VLA    | Village Land Act                                   |
| VNRC   | Village Natural Resources Committee                |
| WCA    | Wildlife Conservation Act                          |
| WD     | Wildlife Division                                  |
| WMA    | Wildlife Management Area                           |
| WPT    | Wildlife Policy of Tanzania                        |
| ZAWA   | Zambian Wildlife Authority                         |

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Finally we would like to express our appreciation to the community leaders in the villages with whom we met and discussed their expectations of the proposed joint venture agreements. We trust that this report will go a long way to achieving their desired results.

Any errors committed in this report belong to the authors and not to any of the above-mentioned individuals or institutions.

# **1. Executive Summary**

The sectoral reform program currently underway in Tanzania will see the implementation of far reaching initiatives that will pave the way for local communities to directly benefit from the presence of wildlife in their areas. This initiative has been made possible by the introduction of the Wildlife Policy of Tanzania and the Village Land Act of 1999 that envisages local communities taking greater responsibility for the management and utilization of wildlife resources in village lands. Several studies have been completed that examine the implications of these initiatives focusing on important policy, legal and institutional issues that must first be resolved.

This study examines the options and impediments that local communities will encounter when they attempt to enter into some form of contractual arrangements with the private sector in order to exploit the natural resources in their village areas. The report is divided into five sections that deal with the scope of work identified in the Terms of Reference. It also provides several examples of “joint venture” agreements that have been developed in the region.

## **Analysis of Critical Issues**

Embarking on a program such as this that involves a major shift in policy invariably raises a wide range of issues for both the administrators and the beneficiaries. Our report deals with these on an individual basis, drawing on experiences from within Tanzania and the region. In particular, we discuss the definition of a “joint venture” and what this means in legal terms to the parties. We believe that it is critically important that all stakeholders have a thorough understanding of the implications of a “joint venture” agreement as it applies to the development of wildlife-based enterprises in the context of communally owned natural resources by local communities.

Also discussed in this section are the various options available to local communities to enter into some form of contractual arrangements with the private sector, highlighting the advantages and disadvantages of the various contractual arrangements. We also review examples of “joint venture” agreements that have recently been negotiated in Tanzania, and discuss the pros and cons of the various methods used to award contracts. To demonstrate the different approaches adopted to implement community-based photographic and hunting concessions, we provide examples from Botswana, South Africa, Zambia and Zimbabwe. Whilst a common theme can be distinguished in each of these approaches, notably the issue of transparency, each country has adapted its approach to deal with the prevailing circumstances. The approach adopted in Botswana is comprehensive and clearly demonstrates how local communities can be protected from unscrupulous entrepreneurs while at the same time securing the maximum market value for

the concession. A comparison of these approaches with the existing system adopted in Tanzania highlights a number of shortcomings where improvements could be made.

Other issues of concern include:

- Security of investments
- Access rights of local communities
- Areas of potential disputes
- Contract enforcement
- Monitoring
- Enforcement of environmental parameters

Each of these topics is discussed in detail, and attempt to address the concerns of the stakeholders. One particular issue that is at the forefront of most people's minds is the provision of social services and how local communities can secure equity in any investment opportunities. These issues are discussed at some length, pointing out the difficulties associated with these concepts as well as possible way that they may be addressed. We also review the position of the Wildlife Policy on Problem Animal Control and what this will mean for local communities in the future.

## **Contractual, Policy, Legal and Institutional Issues**

Entering into contractual arrangements will expose local communities to a number of issues that will require the attention of the various stakeholders. We attempt to highlight the most pertinent issues in this section, paying particular attention to policy and institutional issues. In particular we draw attention to the crosscutting impediments that may affect the successful negotiation of "joint venture" agreements. For example, the role of District Councils and the Wildlife Division and the impact that these institutions may have on contractual negotiations instigated by Authorized Associations is discussed.

## **Access to Professional Services**

Local communities (and related government institutions) are not well versed in normal commercial practices. They will therefore require the services of professional institutions to ensure that any negotiations for concessions *etc.* are concluded to the mutual benefit of both parties. There are a limited number of neutral organizations in Tanzania that are capable of

providing these services, however, they will be hard pressed to service the anticipated demand from local communities once WMAs are established.

We have developed some guidelines to select such service providers and highlight mechanisms that may attract potential service providers in the future.

## **Draft Guidelines and “Joint Venture” Contracts**

In this section we provide the framework to be adopted by Authorized Associations to allocate concessions in WMAs in the future. It is anticipated that the majority of concessions will be for hunting blocks; nonetheless, we strongly recommend that the allocation of these blocks be undertaken through a qualified tender system that relies on separate technical and financial proposals.

The recommended approach draws heavily from examples used elsewhere in the region, particularly Botswana. The overall tendering procedure is discussed in detail, including specific recommendations that should be included in the tender process.

We have also stressed that there is a need to “standardize” the agreements so as to avoid misunderstandings in the future. To achieve this, we recommend that the contract be established using five key principles:

- The purpose of the agreement
- Responsibilities of both parties
- Financial arrangements
- Termination clauses
- General terms and conditions under which the venture will operate.

Several examples of working agreements are provided in the appendices to illustrate the various issues raised above.

## **Draft Agreement for WMAs in Tanzania**

In this final section, we provide a provisional draft agreement that we believe could form the basis for negotiation between an Authorized Association and a potential investor. This agreement has drawn on the examples used elsewhere in the region and has been tailored to meet the legal requirements applicable in Tanzania.

We must stress however, that this draft agreement still requires a great deal more input to develop a working document. Time did not allow this process to be developed in this study. Furthermore, we strongly believe that this process is best developed through dialogue with all stakeholders and recommend that the process be taken further using a workshop forum.

# 1. Introduction

Implementation of the Wildlife Policy of Tanzania (WPT) and the creation of Wildlife Management Areas (WMAs) under the proposed Village Land Act will open the door for a number of enterprise opportunities for the local communities that now benefit little from the presence of wildlife in their areas. In order to take full advantage of the economic opportunities that arise by virtue of WMA designation, they will need to enter into contractual arrangements with hunting and photographic safari operators, hoteliers, wildlife ranchers, and providers of transport and other ancillary services. The sustainability of the ventures they enter into depends importantly on whether the legitimate expectations of both sides are properly taken into account as contracts; concessions, *etc.* are prepared. Yet local residents and private sector operators have little experience in dealing with each other. Moreover, local residents may not be well versed in normal commercial practice, and in this respect find themselves at a disadvantage in terms of assuring that their legitimate interests and concerns are addressed during the negotiation process.

Additionally, there may be important policy, legal and/or institutional impediments to the conclusion of contractual arrangements that both local communities and entrepreneurs would find satisfactory.

It is against this backdrop that this study is being conducted. Its objectives are to define and discuss the issues that will enable local communities to enter into negotiations with the private sector, and to recommend and develop suitable contractual instruments that ensures the protection of both parties.

## 1.1 Studies Completed to Date

Several studies have been completed that provide valuable background information for this study. These are:

### 1.1.1 Review of the Legal Aspects of the Draft Guidelines for WMAs Study – April 2000

This report provides an in depth analysis of the draft Wildlife Management Area Guidelines from a legal prospective, emphasizing how the guidelines can be effectively incorporated into the existing national wildlife conservation policies and legislation. It also reviews the relationship of the proposed guidelines on WMAs and land tenure, as well as their relationship with international conventions on wildlife conservation and management. Mechanisms to enforce the draft WMA Guidelines are also provided.

The study exposes a number of areas where the current 1998 Wildlife Policy of Tanzania (WPT) is in conflict with the existing Wildlife Conservation Act (WCA). In particular, although the

policy embraces the improved participation by communities in wildlife conservation and management through the establishment of WMAs, there does not appear to be a clear-cut procedure for establishing this category of protected area. To rectify this situation will require that the WCA be amended to take on board the developments resulting in the shift in paradigm proposed by the WPT.

Secondly, WMAs will be situated on lands belonging to villages and the law governing village lands (the Village Land Act of 1999) vests in the Village Council absolute power over the control and administration of village land. However, powers of the Village Council to deal with matters relating to wildlife are limited by the present WCA. By the same token the power of the Wildlife Division to deal with village land (where wildlife may be located) is also limited since this power is vested in the Village Council.

This situation requires urgent resolution since it will complicate the operation of the WMA particularly regarding issues relating to land use, ownership of wildlife and land tenure. Another salient feature of the WMA Guidelines concerns the provisions relating to the proclamation of by-laws and the contractual capacity and powers vested in the Authorized Association (AA) and those vested in the Village Council under the provision of the Local Government (District Authorities) Act of 1982.

The report concludes that in order to adequately and effectively implement the WMA's, there is a need to ensure that the provisions of the guidelines are harmonized with the following legislation:

- The Village Land Act, 1999
- The Wildlife Conservation Act, 1974
- The Local Government (District Authorities) Act, 1982
- The Law of Contract Ordinance, Cap 433
- National Parks Ordinance, Cap 412
- The Tanzania Investment Act, 1997



### **1.1.2 Economic Opportunities in Wildlife Management Areas – May 2000**

This study examined four economic opportunities that could be developed by local communities in the proposed WMAs. These are:

- Tourism and resident hunting
- Photo-tourism
- Improved beekeeping and marketing of products
- Natural Forest Management (NFM)

It was demonstrated that all four activities were financially feasible, and that government, district councils and the local community could benefit through a revenue-sharing arrangement. The study envisages that the timing of these interventions would be staggered, beginning with tourist hunting. This would allow the AA sufficient time to adjust to these new initiatives and develop the necessary skills and capacity.

However, the study recognizes that in order to implement successfully the WMA concept, it will be necessary to overcome several constraints. Amongst the more important of these are:

- The capacity for planning and managing business enterprises amongst rural communities is low. Communities will therefore require outside expertise to strengthen their institutional capacity in this regard.
- The economic study anticipates that there will be a period of time during which there will be a shortfall in revenue due to the GoT as a result of initiating the WMAs. It is suggested that this “revenue gap” be addressed through bridging finance and improved marketing.

### **1.1.3 Policy Guidelines for Game Farming and Game Ranching in Tanzania – May 2000**

The purpose of developing these policy guidelines is to assist the Wildlife Division to facilitate the establishment and operation of this form of land use in Tanzania in order that the Government of Tanzania, District Councils, local communities and the private sector can benefit from game farming and ranching activities. The report distinguishes between “game farming” and “game ranching” and provides an overview of different forms and models of these activities elsewhere in Africa and abroad. Essentially “game farms” involves intensive husbandry of one or a few species of wildlife while “game ranching” consists of extensive multi-species and multi-

form utilization that requires relatively large areas of land. This land can either be fenced or unfenced depending on the circumstances.

The options for developing game farming initiatives in Tanzania are reviewed, and a number of species that could be exploited (Giant African Snail, African Button Quail, Crocodile, Ostrich *etc.*) are identified. Comprehensive guidelines for the establishment and management of game farms are provided.

With regard to “Game Ranching,” the report extensively reviews the development of this form of land use across southern and eastern Africa, focusing on the changes in policy that brought this about and the benefits that have accrued to the stakeholders. The exception has been the involvement of local communities where factors such as land tenure, access rights, revenue sharing and capacity to manage wildlife areas has complicated the issue.

In the Tanzanian context, the Wildlife Division is eager to encourage the establishment of fenced and unfenced game ranches, although it does have some reservations regarding the implementation of this form of land use. The guidelines developed by the report attempts to address these concerns, particularly the location, size and fencing requirements of game ranches.

In the context of WMAs, it is argued that this form of land use could be accommodated either as fenced game ranches or as “conservancies” where the AAs could take advantage of the professional management and infrastructure development associated with this type of land use. However, the WMA Guidelines do not permit game farming or ranching to be developed in the proposed WMAs. The rationale for this is unclear since the difference between a “wildlife management area” and a “game ranch” is difficult to distinguish. It is argued that this may be related to the reluctance on the part of the Wildlife Division to sanction the fencing of extensive areas that may impact on wildlife movements, or simply because the term “game ranching” is not defined in the WPT.

## **2.2 Scope of Work**

The Scope of Work for this study (see Appendix 1) identifies four major tasks to be addressed. In summary these are:

1. Provide recommendations on contractual, policy, legal and institutional issues that may arise during the process of negotiating joint venture agreements with entrepreneurs, including changes in legislation, guidelines or by-laws.
2. Provide an analysis of critical issues and provision of answers to a wide range of questions including:

- what types and duration of contracts are appropriate,
- how contracts should be awarded,
- consider the pros and cons of the existing systems in awarding contracts
- how can security of investments assured,
- access rights of local communities and enforcement of these rights,
- identify areas of potential disputes and how these may be resolved
- identify mechanisms to protect community rights, and mechanisms to create awareness of these rights
- mechanisms for contract enforcement
- identify institutions responsible for monitoring, and suggest monitoring parameters,
- enforcement of environmental parameters
- provision of social services by entrepreneur,
- use of local labor,
- mechanisms to ensure local community equity in investments, including value of their contribution
- level of local communities contribute in the investments,

Other issues to be considered include:

- Suggest provisions that must be incorporated by reason of applicable law or policy.
  - Suggest mechanisms that can guarantee supply of local inputs that will be needed by entrepreneurs.
  - Review WPT policy on problem animals and suggest methods for control/management of problem animals in areas contractually assigned to entrepreneurs for designated purposes.
  - Suggest ways for collaboration between WD, Village Game Scouts, Anti poaching Unit and District Game Scouts for law enforcement in areas contractually assigned to entrepreneurs for the purpose of carrying out agreed upon activities.
3. Suggest how local communities can access services to provide them with expert advice on contractual issues, and indicate what kind of organization(s) could provide these services effectively and efficiently (public sector agencies at all levels, reputable private sector organizations, including both for profit firms and NGOs. Criteria for selecting a given NGO/private sector organization to provide such services are to be provided. In the event that private sector organizations are not available in country, suggest ways that such organizations could be attracted, with or without the kinds of enticements that would have to be provided by government, donors or both.
  4. Provide draft guidelines and contracts on how communities can enter into joint venture with potential investors. The guidelines must be complete with procedures, description of institutional responsibilities, rights and obligations of each stakeholder as well as draft contracts.

Our approach to dealing with these issues has been to review all available literature and meet with key stakeholders, including the Director of the Wildlife Division, representatives from TANAPA, NGOs and the private sector, and representatives of local communities. For ease of understanding, the report is structured in five sections:

- An analysis of critical issues
- Contractual, policy, legal and institutional issues
- Access to professional services
- Draft guidelines and “joint venture” contracts

- Draft agreement for WMAs in Tanzania – The way forward

Background data are included in the annexes.

## 2. Analysis of Critical Issues

The introduction of “joint venture” initiatives and the implications of the WPT will have a far-reaching impact on the management of wildlife in village areas in future. Naturally this major shift in policy has raised a wide range of questions. In this section, we attempt to provide answers to some of these.

### 2.1 Definition of a “Joint Venture” Contract

It is important at the very outset to clarify what is meant by “joint venture” – a term that is freely used to describe the type of contractual arrangements that is envisaged between a community and an entrepreneur.

#### 2.1.1 Interpretation of a “Joint Venture” in the WMA Guidelines

The draft WMA guidelines envisage that a community and an entrepreneur will enter into some form of agreement (or contract) to exploit the wildlife resource that occurs on village land that has been designated as a WMA. In terms of the WMA Guidelines, a “*Joint Venture*” means:

*When the AA and other parties form a separate organization to undertake protection, management and/or utilization of resources in WMAs.*

The Guidelines also cater for a “*Partnership*” that means:

*Two or more authorized parties of which one must be an AA enter into agreement to undertake protection, management and/or utilization of resources in WMAs.*

Other key concepts include:

***Security of Tenure:*** means the authorized period, which an area designated as a WMA, shall remain as such.

***User rights:*** means the lawful permission to use wildlife resources found within the WMA according to the existing laws and regulations.

***Wildlife Management Area:*** means an area declared by the Minister to be so and set aside by village government for the purpose of biological natural resource conservation.

The Division of Wildlife through a Memorandum of Understanding (MoU) will grant User Rights to an AA responsible for the management of the WMA. Once user rights have been granted, the AA can enter into contracts with investors for the purpose of utilizing the wildlife resources. The Division of Wildlife can withdraw the user rights if the MoU is not adhered to.

Of crucial importance here is that the AA may only enter into an agreement for a period of not more than 10 years, and that the AA may only enter into a Joint Venture or Partnership with the concessionaire provided the AA holds the majority (*i.e.* greater than 50 percent) of the shares<sup>1</sup>.

### **2.1.2 Legal Interpretation of a “Joint Venture”**

Usually a contract is the foundation of the relationship between two consenting parties (in this case between the entrepreneur and the producer community). However it is important that the legal meaning of the term “joint venture” is thoroughly understood by all parties since it has far reaching implications in the manner in which agreements are concluded.

Traditionally a “joint venture” will involve two (or more) parties who bring together their respective skills, assets and financial resources to develop and take advantage of an economic opportunity (in this case it could be tourist hunting or a photographic safari lodge). In doing so, both parties to the agreement will provide the technical, financial and managerial skills necessary for the success of the “joint venture.” Equally, both parties will be responsible for their actions and will be required to share all the risks associated with the venture. More importantly they will be required to equally share the financial risks involved depending on their equity in the venture *i.e.* all parties will be liable for any financial losses, law suits and tax implications associated with the venture.

The critical issue here is that local communities (or in this case the AA) are unlikely to inject any substantial financial resources to a “joint venture” nor will they be exposed to the “financial risk” associated with a hunting or tourism venture. That is not to say that their contribution in the form of access to the land and the wildlife resource is not without value. Rather, the vulnerability and circumstances surrounding community participation in wildlife-based “joint ventures” dictates that local communities should be protected from the financial risk associated with such ventures. Given that the access to the resource is “communally owned,” an institution such as the AA cannot compromise this position in a way that they loose control of their access rights to the resource to a third party through a financial impropriety.

At the same time, given the level of investment and the nature of wildlife-based commercial activities, it is essential that the interests of both parties be protected through a legally binding agreement. In particular the structure of the agreement should ensure that the communities receive a fair return for the assets under their control – in this case access to the wildlife resource – and the interests of the entrepreneur are secured.

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<sup>1</sup> This requirement is under review

It is therefore critically important when developing “joint venture” initiatives that both parties understand that it is the entrepreneur who will assume all financial risk and will be responsible for providing the technical and managerial skills necessary for the success of the venture. It is for this reason that the entrepreneur will seek security of tenure to ensure that he/she can recover their investment, and insist that the local community uphold certain obligations and responsibilities in order to protect his/her investment.

Legally and technically therefore such agreements should be referred to as ***Resource Management Contracts***. However, for simplicity sake, it is easier to describe the type of arrangement as “joint ventures.”

### **2.1.3 Type and Duration of Contracts**

The two most important parts of the contract is its financial structure and the duration. How these are agreed upon will determine the complexity of the agreement and how the contract will be marketed.

### **2.1.4 The Payment System**

There are many ways in which a community can charge a safari operator for the use of an area, and for access to the animals on the land. Four popular ways are:

- A single fee for the use of the area (applicable for either short duration safari hunting and/or photographic safari ventures)
- A fee for each animal shot/wounded/captured (applicable to only to hunting operations)
- A percentage of the gross income of the operation (applicable to either hunting or photographic operations of medium duration ventures)
- A negotiated “joint venture” in which the entrepreneur agrees to certain direct and indirect costs, including certain social and environmental obligations (applicable to either long-term hunting or photographic operations).

Some of the above methods are already being employed in Tanzania, both for hunting and for photographic operations. The pros and cons of these various methods are discussed below.

#### ***Single fee lease paid annually***

In such agreements, the community and the entrepreneur agree on a lump some figure that is paid annually for the right to use an area for photographic tourism or to hunt a quota of animals.



The community is not exposed to any complicated legal arrangements and the financial risks to both parties are minimal.

The disadvantage of this system is that there is the possibility that the community will not receive the full value for their assets. Furthermore, the entrepreneur is not bound through any legal arrangement to meet certain obligations (employment, provision of social services *etc.*) since security of tenure is not assured. It is also difficult to demonstrate the linkage between the value of wild animals and the tourism activities – communities therefore cannot see the long-term future of such ventures and tend not to have the incentives to conserve wildlife in their areas.

### ***Fee paid for each animal shot***

In this type of contract, the community agrees that the safari hunting company will pay a set fee for each animal shot (or wounded). It may also set certain conditions regarding the hunting season, delivery of meat and where animals may be hunted. The duration for this type of agreement varies from three to five years with the option to cancel the agreement at short notice.

The advantage of this approach is that the agreement is easy to administer and it is possible to demonstrate the linkages between the value of wildlife and conservation. The strong incentive for communities to conserve their wildlife is easily demonstrated because they are paid directly for the animals that they produce.

The disadvantage of this system is that the hunting company is not afforded any level of security and thus will be reluctant to invest or develop the WMA. There is also the risk that the operator may not shoot all the animals on the quota and thus the community may not receive the maximum income. Another disadvantage is that it is not always possible to determine the market value of the individual animals. As a result, there is the risk that the community could “undersell” the animals and thus be disadvantaged, particularly if the agreement is for an extended period of time. This case is illustrated in the MBOMIPA project where the local community has gradually increased the cost of animals to resident hunters from Tshs 5 million in 1996 to Tshs 18 million in 2000.

### ***Percentage of gross income of the operation***

This type of agreement assumes that the community has an understanding of the business environment in which the entrepreneur operates. Furthermore the agreement is based on **gross income** rather than **net income** so that the community is protected from the affects of the entrepreneur’s ability to control costs. Depending on the structure of the agreement, it also provides the community with the opportunity to become more directly involved with the management and operation of the business through the transfer of skills. It is, however, important

to define how gross revenue will be calculated and how it will be monitored. This presupposes a thorough understanding of the tourism business.

The advantage of this form of contract is that the community will benefit when the tour operator has a good year, however, the disadvantage is that in a poor year both parties will suffer. It is possible to protect against this by building a guaranteed minimum income into the agreement so that communities will at least receive some income in bad years. Another disadvantage is that it is difficult to monitor such agreements since it requires accurate and honest bookkeeping on the part of the operator. In most cases tour operators are not willing to share information regarding their financial arrangements with third parties, especially in situations where they are assuming all the risk.

### ***Negotiated “Joint Venture”***

These are individually negotiated partnerships that describe in detail the responsibilities of both parties to take advantage of both safari hunting and/or photographic tourism activities within the limits set by the community. The duration of this type of agreement can vary from three years to 25 years, and may include a renewal clause of some form. The advantage of this type of agreement is that it provides security of tenure, and the financial rewards for both parties can be high. There is also the incentive for the safari operator to invest in the long-term future of the WMA, which in turn improves the management of wildlife.

In essence the agreement incorporates five key sections<sup>2</sup>:

- The purpose of the agreement.
- The responsibilities of both parties.
- The financial arrangements, including the payment schedule.
- Conditions under which the agreement may be terminated, including clear remedies to correct any breach of the agreement by the operator.
- General terms and conditions that protect the interests of both parties and the biophysical features of the WMA.

The “spirit” of such agreements ensures that the “land holder” is always in control of the WMA and is fully integrated into the day-to-day operations of the project but at the same time is

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<sup>2</sup> See Section 6 for further details.

protected from the financial risks involved in the venture. It is also important that the entrepreneur be assured that his/her assets and investments will be fully protected and that the venture can be successfully implemented.

The disadvantage of this approach is that the negotiations can be protracted and there is the possibility that the final agreement may foreclose options for the community for an extended period of time. In addition, the agreement can contain complicated legal jargon that the community may find difficult to understand. Adopting this approach therefore requires careful planning to ensure that the interests of the community are protected.

## Summary of Types and Duration of Agreements

| Type of Agreement   | Duration   | Advantages   | Disadvantages   |
|---|--|--|---|
| Single Lease Fee<br>Applicable to both hunting and photographic operations      | Annual with option to renew  | <ul style="list-style-type: none"> <li>• Easy to administer</li> </ul>   | <ul style="list-style-type: none"> <li>• Price can be undervalued</li> <li>• Limited investment by operator</li> <li>• Difficult to demonstrate linkages between Lease Fee and value of resource</li> <li>• Little security of tenure</li> <li>• Creates instability in the industry</li> </ul>                       |
| Fee paid for each animal shot<br>Applicable to hunting operations only          | Up to 3 years with option to renew   | <ul style="list-style-type: none"> <li>• Easy to administer</li> <li>• Linkages between value of wildlife and conservation can be demonstrated.</li> <li>• Fees can be negotiated in US\$ for foreign based companies.</li> <li>• Attractive to resident hunters in poor blocks</li> </ul>   | <ul style="list-style-type: none"> <li>• High risk of undervaluing wildlife resource</li> <li>• Community may not receive maximum potential income if animals not hunted</li> <li>• Little security of tenure</li> </ul>  |
| Percentage of gross income<br>Applicable to hunting and photographic operations | Up to 5 years for hunting operation<br>Up to 10 years for photographic operation<br>Both with option to renew  | <ul style="list-style-type: none"> <li>• Incentive for the community and operator to work together is high.</li> <li>• Both parties benefit during good years</li> <li>• Encourages development of concession</li> <li>• Suitable for tender system</li> </ul>   | <ul style="list-style-type: none"> <li>• Requires a high level of understanding of business environment.</li> <li>• Community can be prejudiced in poor years unless safeguards are built into the agreement.</li> <li>• Can be difficult to administer and monitor</li> </ul>  |
| Negotiated Joint Venture<br>Applicable to hunting and photographic operations   | Up to 10 years for hunting operation<br>Up to 15 years for photographic operation<br>Both with option to renew | <ul style="list-style-type: none"> <li>• Possible to develop an agreement to suit a specific situation.</li> <li>• Responsibilities of both parties clearly defined.</li> <li>• Provides security of tenure</li> <li>• Rights of both parties protected</li> <li>• Can be lucrative for both parties.</li> <li>• Improved wildlife management</li> <li>• Engenders stability in the industry.</li> <li>• Suitable for tender system</li> </ul> | <ul style="list-style-type: none"> <li>• Can take time to negotiate and develop the agreement.</li> <li>• Requires thorough understanding of business environment.</li> <li>• Usually requires professional expertise to negotiate the agreement.</li> <li>• Potential to foreclose future options is high</li> </ul> |

## 2.2 Options for Awarding Contracts

The options available to communities for awarding contracts are confined to one of the following:

- Direct negotiation with a prospective investor
- Open Competitive Tender
- Open Auction

Each of these options has advantages and disadvantages, and the approach can be modified to suit particular circumstances (*e.g.* qualified tender or auction). In this section we examine examples of agreements that have been concluded in Tanzania and discuss approaches that have been used in Botswana, South Africa, Zimbabwe and Zambia.

### 2.2.1 Examples of Agreements Currently Active in Tanzania

There are examples of contractual arrangements between communities and private tour operators in Tanzania that have been individually negotiated. These vary in complexity from an informal arrangement with the community for access to an area to a formal contract that commits the two parties to a long-term agreement.

It is understood that a long-term agreement has been negotiated between the *OLOLOSOKWAN VILLAGE COUNCIL* and *CONSCORP* (a South African based company)<sup>3</sup> in the Loliondo GMA that commits both parties to a 25-year agreement over an area of 25 000 acres. It is also understood that a further six agreements are pending in the Arusha District that are currently being negotiated with the assistance of AWF. Loose arrangements also exist between mobile photographic operators and various village councils in which *ad hoc* fees are paid for the right to set up temporary tented camps on village land. It is understood that this practice has been in operation since 1991 with more formal arrangements being established in 1998. Recently, however, the Wildlife Division has suspended these arrangements pending the release of the WMA Guidelines (Director of Wildlife, *pers. comm.*)

In another example, a photographic company (Sokwe Safaris, Arusha) has assisted a community to establish three campsites in their area that are under the control of the Village Natural Resources Committee. These campsites are located close to the Serengeti National Park and provide a base from which several operators can conduct safaris into the park. No formal

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<sup>3</sup> The consultants were not able to meet with these parties or establish the terms and conditions of this agreement.

agreement has been signed between the operators and the community but an informal arrangement exists in which the following payments are made;

- US\$20/client/day – Paid to Natural Resources Committee of the Village
- US\$10/client/day – Paid to District Council
- US\$10/entry/client – Paid to District Council

Under the auspices of the Selous Conservation Program, an agreement has been concluded between the Trustees of the *JUKUMI SOCIETY* and a *TENT WITH A VIEW SAFARIS LIMITED*. In terms of this agreement, the company has been allocated 25ha to establish a tented camp on customary land adjoining the Selous Game Reserve. The duration of the agreement is for 10 years with an option to renew. An escalating “right to operate” fee has been negotiated that increases from US\$3 000/year in Year 1 to US\$9 000/year in Year 10. In addition a bed night levy of US\$5/client that escalates by at least 5 percent per year is also imposed.

## **2.2.2 Wildlife Division Agreements**

The Wildlife Division has developed a standard agreement that is issued to safari outfitters who have secured hunting blocks either in the Game Reserves or Game Control Areas. This agreement outlines the undertakings (= responsibilities) of the Government and the outfitter (referred to as the “client” in the agreement). The responsibilities of the government include:

- Issuing the necessary permits
- Allocating hunting blocks
- Prescribe the fees to be paid, including any changes to the fees
- Supervision of all hunting expeditions and safaris
- Monitor all fees to be paid by the client
- Control the transfer of licenses
- Withdraw hunting permits in instances where the WCA is contravened
- Ensure that the outfitter contributes to community development projects in the district within which the hunting block is situated

- Withhold issuing any hunting permits to an outfitter and/or Professional Hunter who has failed to adhere to the ethics and standards required by the hunting industry in Tanzania

The responsibilities of the outfitter (= client) are to:

- Produce evidence that he has acquired all the necessary permits and licenses, has the necessary financial resources, and that the company is registered in Tanzania.
- Provide names and particulars of the professional hunters
- Obtain all hunting permits from the government
- Hire the services of a professional hunter for all hunting safaris
- Only conducts hunting safaris in blocks that are allocated to the outfitter
- Only hunts the species specified on the permits
- Only employ Tanzanian nationals for manual and casual labor
- Abide by all directives, regulations and by-laws relating to the WCA, Revenue Laws, Exchange Control Laws, Immigration Laws
- *Pay all prescribed fees (set at US\$7 500/block/year)*
- *Undertake to utilize not less than 40 percent of the total quota of key species allocated as well as to generate revenue of not less than 40 percent of the value of the total quota so allocated*
- Undertake anti-poaching operations during and after the hunting seasons
- Ensure that all hunting trophies are exported within 60 days after the completion of the safari
- Be conversant with the WCA
- Pay for all animals killed and/or wounded before trophies are exported
- Not resort to court action before complying with the provisions of the WCA to resolve his remedies against government

- Pay for the block(s) before the hunting season starts
- Contribute to the development and welfare of the Community in the District

Other miscellaneous requirements include:

- Professional hunters are in overall charge during a safari
- Any accidents that occur during a hunting safari are to be reported to government
- Outfitter is to replace a Professional Hunter in the event that he is injured or becomes unavailable during a safari
- Carcasses that are not utilized by the outfitter may be appropriated by government at no charge
- All arms and ammunition not utilized by the client are to be exported unless the client surrenders these to the government
- All professional hunters are required to pay the prescribed fees
- Contravention's of the agreement can lead to termination by the government
- Outfitter to ensure that all employees adhere to the terms and conditions of the agreement

Whilst this agreement appears to be comprehensive, there are a number of clauses that make the agreement extremely cumbersome to administer. One particular area of concern is that the agreement includes conditions pertaining to the regulation of the outfitter whilst in the field. This means that if the Wildlife Division wishes to alter any of the operating procedures or impose new conditions on the outfitter, the entire agreement has to be amended. It is for this reason that agreements rarely include such conditions – these are better managed through a permit system that can be modified without interfering with the primary contract agreement document.



### **2.2.3 Advantages and Disadvantages of Direct Negotiation**

This option usually involves an investor approaching a community directly to negotiate a contract to exploit an opportunity in their area without having to formally tender. An example of this is seen in the Conscorp agreement with the Ololosokwan Village Council.

#### ***Advantages***

The advantage of this approach is that the community does not have to invest any effort or finances into preparing any documentation to market its wildlife resources. On the part of the investor, the advantage is that competition from other potential investors is removed.

This approach also allows the two parties to conclude their negotiations without the pressure from other investors and this provides both parties with the opportunity to discuss the various contractual issues in an amicable environment. Furthermore, unless the proposed contract includes complicated clauses, there is no need to involve third parties in these negotiations.

#### ***Disadvantages***

The major disadvantage of this method is that there is a high risk that the community may not receive the maximum value for the concession. In addition, there is a high risk that the community could foreclose options if the duration of the lease is for an extended period. This is particularly the case where hunting concessions are concerned.

### **2.2.4 Advantages and Disadvantages of an Open Auction System**

Under this system the concession areas are advertised, providing background information regarding the details of the area, duration of contract and contractual arrangements. Potential investors are given an opportunity to visit the area to assess the situation on the ground, and to query any issues regarding the terms and conditions of the contract. The potential bidders are then invited to attend a public auction where the highest bidder secures the concession.

The suitability of this of this option depends upon the management objectives for the concession concerned. If the management objective is to maximize revenues, and ensure transparency, then this is the best system to use. However, if there are other management criteria for the concession (such as award to a concessionaire with a good track record, or the community require certain management programmes and or social services to be undertaken by the concessionaire), then this may not be the most appropriate mechanism.

#### ***Advantages***

The open auction system addresses the issue of transparency and is relatively simple to administer. This system also clears the market and establishes the market value for the

concession. There is also the added advantage that the investor is required to pay the full amount on securing the concession unless special conditions are negotiated.

### ***Disadvantages***

The major disadvantage of this system is that the auction system is open to all potential investors. The community cannot therefore select the “best” partner in the joint venture. In addition, it is difficult to impose conditions through a contractual arrangement unless these have been clearly described to all participants prior to the auction. Even so, there is still the risk that the winning bidder may still want to negotiate the terms and conditions of the contract and this could delay the implementation of the project.

Another disadvantage is the fact that because the highest price has been paid for the concession, there may be a tendency for the successful bidder to attempt to maximize revenue generation from the concession *e.g.* shoot all the animals on quota and be less inclined to invest in the area or spend money on management activities.

There is also the risk that objections from the domestic industry may be raised if the auction is open to foreign bidders even though this would generate the maximum revenues.

### **2.2.5 Advantages and Disadvantages of an Open Competitive Tender**

The most common method of awarding contracts is through an open competitive tender system. This approach does, however, require a certain amount of background preparation in order to be successful. For example, the community will have to decide exactly what it wants to sell, and will have to make decisions regarding:

- What animals are to be hunted (if it is a hunting concession)
- Where hunting will take place
- The duration of the agreement
- The structure of the agreement
- The minimum value of the tender
- How the tender will be marketed (advertising, contact with the industry *etc.*).
- How the tenders will be evaluated.

It is also important to allow sufficient time to process the tender documents in order to allow potential investors to respond to the tender notice. Care should also be taken not to advertise the tender notices at the height of the tourist season since potential investors will find it difficult to respond during their busiest time.

The community should also be aware that potential investors would require a certain amount of background information regarding the WMA on which to structure their bid. To accommodate this, an information package can be prepared that provides the following information:

- A covering letter explaining the contents of the information pack and the proposed agreement.
- The full hunting quota (and the minimum value that the community expect for the quota)
- Any other base fees that the tenderer will be expected to pay (*e.g.* bed levy, concession fee *etc.*)
- Description of the area, including a map that indicates the boundaries
- Date by which the tender is to be submitted
- A standard tender form that provides background information regarding the company, its directors, professional guides/hunters *etc.*

Provided that standard tender procedures are followed, and the tender process has been well planned, there should be very little problem of selecting the winning tender from among the applicants.

### ***Advantages***

The open competitive tender system will clear the market and provide all potential investors with an equal opportunity to secure a concession area. This method will also provide the opportunity to determine the market value for the WMA on offer and thus the community can be assured that it will receive the maximum income for the area. It also allows the community some flexibility in awarding the tender, and they do not necessarily have to accept the highest bidder. Another advantage is that the concession can be awarded on the basis of criteria other than financial. This system is greatly improved by insisting that technical and financial proposals be submitted separately. Furthermore the community is not obliged to accept any or the highest offer if the proposals do not meet their requirements.

## ***Disadvantages***

The disadvantage of this system is that, unless there are specific restrictions put in place, anybody can participate in the tender. This means that the community may enter into a contract with a potential investor who knows very little about the industry and therefore will fail to meet their commitments.

The process is not transparent and can leave the organization exposed to allegations of corruption unless specific conditions are put in place to mitigate against this. Furthermore, the selection process can be problematic if the tenders offer a wide range of benefits that are difficult to assess. There is also the risk that the revenues raised through the tender system may not be as high as under the auction system.

## **2.3 Examples from within the Region**

Community-based photographic and hunting concessions have been negotiated throughout the region and the following examples summarize the approaches adopted in Botswana, South Africa, Zimbabwe and Zambia. The complexity of these approaches varies greatly depending on the area, value of the resources and the level of competition.

### **2.3.1 Botswana**

Several community-based conservation programmes have been successfully initiated in Ngamiland in northwestern Botswana in recent years. This initiative has been put in place following a substantial amount of land use planning on the part of the district land board that identified various WMAs. These WMAs were then categorized as either hunting and/or photographic areas that were under the control of a local community or the district authorities.

Communities wanting to enter into a joint venture agreement are required to establish a registered Trust<sup>4</sup> whose objective will be to sustainably manage the natural resources of the WMA for the benefit and development of the community. The Trust and the Land Board enter into a “Head Agreement” in which the Trust is granted sole rights of managing the resources within the WMA.

Through the “Head Agreement,” the Trust is empowered to set the terms and conditions under which companies submit their tenders for the concession. These include:

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<sup>4</sup> This Trust is similar to the proposed Authorized Association under the WCA

- The purpose of the tender (enter into a joint venture, managing hunting and tourism, guidelines to preparing technical and financial proposals *etc.*).
- Rights of the Trust and safari company (restricted to Botswana registered companies, structure of the joint venture, duration of lease, condition for renewal, exclusivity rights *etc.*).
- Conditions imposed by the Trust (provision of Community Escort Guides, delivery of meat, community traditional rights to collect firewood, thatching grass *etc.*, hunting season, citizen hunting, hiring of local labor *etc.*).

To qualify for the tender, only companies registered in Botswana can apply. In addition, safari operators are forbidden from canvassing for votes in the WMA between the time that the tender is advertised and the award of the tender. Canvassing in any form is prohibited and can lead to disqualification.

The tender procedure requires that three documents be submitted under a separate cover. These are:

### **1. The Technical Proposal**

This is to be submitted in accordance with detailed terms and conditions prepared by the Trust. These are:

- The technical proposal must not contain any reference to the tenderer, its directors, shareholders or its employees, or any reference to the financial offer. Failure to meet this requirement will result in disqualification<sup>5</sup>.
- The technical proposal should be within the framework of relevant government legislation and any land use or development plans for the WMA.
- Clear and concise statements regarding the social, ecological, economic and management objectives of the joint venture are to be provided, including the proposed joint venture arrangement.
- A brief outline of the natural and economic environment is to be provided (*i.e.* national, regional and local setting of the project, current business and economic

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<sup>5</sup> This overcomes the problem of transparency in the tender process – the evaluators do not know which company is being evaluated.

environment, understanding of government policies, understanding of social and development needs of the community, understanding of district development plans, understanding of natural and socio-economic environment within the WMA).

- The proposal must demonstrate knowledge and understanding of the current wildlife status of the area, including the intentions of the tenderer towards managing the wildlife populations and how the wildlife populations will be protected from illegal use.
- The technical proposal must clearly show the activities proposed to be undertaken within the WMA (hunting, photographic, walking, canoeing *etc.*).
- The technical proposal must demonstrate how the harvesting of natural resources by the local community will be accommodated under the project, including how community/resident hunting will be managed to avoid conflicting with the commercial activities.
- All proposed development of infrastructure in the WMA must be described and detailed on appropriate maps, including detailed cost plans and work programmes. These plans must also demonstrate that they will not adversely affect the area, its people or wildlife populations.
- A detailed development plan is to be included that takes into account climate, breeding seasons, any animal migrations *etc.*
- The tenders should stipulate the number of local employment opportunities that the company will provide and the respective positions, competitive salaries, guaranteed minimum of community members employed, season contract work, staff training, type of accommodation *etc.*
- Tenders are required to provide clear indications of their proposed community development program (*e.g.* skills transfer, staff recruitment, development of handicrafts, development of small scale businesses, assistance with transport, provision of water, provision of food, cultural tourism, educational development, schools, clinics *etc.*).
- A cash flow analysis of the proposed infrastructure development and sources of finance are to be included. Projected income should be clearly explained with anticipated tourist numbers and turnover.
- Tenderers are required to demonstrate how they will market the area.

## **2. The Financial Proposal**

- This is a relatively simple document that highlights the following:
- A guaranteed minimum land rental with proposed increments during the course of the agreement.
- A resource royalty as a proposed percentage of the gross income accruing from the use of the natural resources (usually set at about 4 percent).
- A fee for each species on the quota equal to or above the reserve price. Tenderers should show their proposed increments.

## **3. The Company Background**

The tenderer is required to provide the following minimum information in this document:

- Copy of the company's Certificate of Incorporation, including a list of all major shareholders, the directors and their nationality.
- Copy of any tourism licenses.
- An overview of the company's activities in hunting and/or photographic tourism in Botswana.
- Names and CVs of their professional guides and hunters the company intends to employ.
- Any brochures/advertising material that the company may want to include.

## ***Tender Assessment Process***

A technical committee is appointed by the Trust to review the Technical Proposals. This committee consists of members of the Trust, Land Board, Department of Wildlife and a community representative. Each technical proposal is scored in terms of its technical aspects, merits and compliance with the tender conditions. A short-list of tenders (usually not more than six) is then prepared and presented to the Review Committee of the Trust.

The Review Committee then opens the envelopes containing the Financial Proposal and Company Background. With the help of the Technical Committee, a short-list of the three best tender proposals is selected. These are then presented to the Village Council. In certain

circumstances, the short listed tenderers may be required to present themselves for an interview and present a synopsis of their company to the meeting.

Thereafter a secret ballot is conducted to select the successful candidate. In the event that the financial offer of the winning proposal is lower than any of the other bids, then successful company may be asked to match the highest financial bid.

### ***Advantage of this approach***

This approach to awarding a concession may at first appear to be complicated and require a high level of technical input. However, its main advantage is that it protects the communities from canvassing by safari operators. The technical proposal also allows the technical committee to assess the commitment of the tenderer and their understanding of the natural and socio-economic features of the WMA. Furthermore, by insisting that no reference is made to the company, its shareholders or directors in the technical proposal, it is extremely difficult for the technical review committee to identify or recognize the company. This means that the best six technical proposals are short listed irrespective of the company background.

With regard to the financial structure, the format encourages the tenderer to submit a competitive bid since it is possible that they could be eliminated when the financial proposals are reviewed. In addition, if the winning proposal is lower than the others, there is the opportunity to match the best financial offer.

### ***Disadvantages of this approach***

The major disadvantage of this approach is that it requires a substantial input from technical experts in setting up the tender notification and to assess the technical proposals. Furthermore, tenderers are usually required to employ professional assistance to prepare the tender documents, which could be costly and time consuming.

The tender assessment process also assumes that the Land Board has a clear vision of how they intend to develop the region. In the case of Tanzania, this would require long-term planning on the part of the Village Council and thus emphasizes the importance of village land use plans.



### **2.3.2 South Africa**

The South African National Parks (SANP) has adopted a strategy termed “Commercialization as a Conservation Strategy” that provides the private sector with the opportunity to operate within a national park, but without alienating any of the SANP assets<sup>6</sup>.

A detailed analysis of SANP’s existing commercial operations identified that within SANP’s existing commercial operations, the organization has relative competencies and certain problem areas. This provided the foundation for a phased approach to the implementation of the commercialization strategy. The first phase of this process consists of the following:

- Outsourcing all the shops and restaurants throughout the organization. SANP is currently exploring different ways of implementing this element, very mindful of the market research conducted showing that visitors are very sensitive to “over commercialization.”
- Concessioning out the existing small camps in Kruger National Park that can be effectively managed by specialists in the industry who are able to make better use of the resource base.
- Granting a number of new peripheral concessions in Kruger National Park, Addo Elephant and Kalahari Gemsbok.
- Concessioning the hotel and chalet facility at Golden Gate Highlands National Park.

The concessions for the existing small camps have been advertised on the SANP website, and are scheduled for implementation by October 2000. Other facilities are being considered for commercialization in both the near and medium term, but this requires extensive analyses and thorough consideration of a number of issues, including, critically, accessibility.

### ***Approach***

SANP is mindful of the numerous potential pitfalls associated with embarking on such a strategy. In order to ensure that the risks of making mistakes are minimized, SANP has retained the services of the International Finance Corporation, the private sector arm of the World Bank, who are specialists in such transactions. The IFC is acting as SANP’s lead advisor and is making use of a number of specialist sub-consultants to further inform the process. These are:

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<sup>6</sup> It is important to note the difference between commercialization and privatization. Privatization in terms of the conventional definition involves the transfer of assets from the State to the private sector.

- Description of the Sites
- Environmental Issues
- Social Issues
- Contractual and Process Issues

In the context of this report, we have highlighted the contractual and process issues of this approach.

### ***Main Contract Terms***

The means by which private sector interests will be granted rights to take over or establish new game lodges within the National Parks boundaries is the *concession contract*. This is a contract by means of which SANP grants to the concessionaire the rights to use certain assets (in particular, land and any buildings that may already exist) in return for payment of concession fees. There are important features of concessions:

- SANP remains the owner of the assets (land and buildings) and immediately becomes the owner of all new fixed assets built on the site even if the concessionaire financed these.
- The exercise of the rights is congruent with the term of the contract – when the contract expires, subject to termination provisions, the concessionaire’s rights expire with them.
- At the expiry of the contract, the land, plus any buildings thereon, revert to the possession of SANP.
- As counterpart to these rights, there are a set of obligations on the part of the concessionaire to respect the rules regarding the environment, social objectives, empowerment and so on.
- Infringement of these rules incurs penalties and ultimately the rupture of the contract with the assets reverting to SANP.

Principal terms of the draft concession contract include:

- *Term:* In the normal case, the term will be for 15 years. Exceptions may be possible in the case of very large investments that require a longer period of amortization.
- *Option for Renewal:* Concessionaires will not have an option to renew at the end of the term.

- *Re-Bid Upon Expiry:* At the end of the concession period, the contract will be put up for re-tender to interested bidders. The incumbent concessionaire will be entitled to bid.
- *Use of Concession Area:* The concessionaire will have exclusive use of a specified area of land (“the Exclusive Traversing Area”), under specified terms. These areas will be off-limits to normal Parks visitors.
- *Construction of New Facilities:* The concessionaire will bear the cost of construction new facilities, including roads, buildings and infrastructure.
- *Environmental Regulations:* All concessionaires must comply with all existing SANP, Provincial and national legislation concerning protection of the environment, in addition to those regulations specifically spelt out in the contract
- *Payment of SANP Fees:* Concessionaires will pay fees to SANP for the right to use the concession area, either as a minimum annual rental, or as a percentage of gross revenue—whichever is the greater.
- *Penalty and Termination Provisions:* Concessionaires will face a sliding scale of penalties, for breaches of environmental, social or financial terms of the contract. After financial penalties have been exhausted, SANP may terminate the contract for continued breaches.

### ***Prequalification***

The purpose of prequalification is to ensure that all bidders have the technical and financial strengths, and the ability to implement the project according to prescribed standards. Bidders for the concessions should have demonstrated experience in eco-tourism, and sufficient financial standing that they can be expected to mobilize the investment needed. Prequalification criteria will be set to require this.

The prequalification hurdle will be set to ensure that the pool of potential bidders is sufficiently large to generate competition. Criteria will be set on a site-by-site basis, based on the level of interest for each site, and the quality of operators who have expressed interest.

### ***Due Diligence Process***

Prequalified bidders are invited to conduct their due diligence at SANP and are given two months to do so. SANP charge an administrative fee for providing support services to bidders during their due diligence that involves:

- Site inspections (organized by SANP)

- Access to data and other information
- Access to, and the opportunity to comment on, the draft concession documents
- A detailed explanation of how the bidding criteria will work

The entire process is controlled by SANP in order to ensure that all bidders receive the same access to information.

### ***Bidding System and Evaluation Criteria***

The design of the bidding system is driven by the need for transparency. The primary criterion for selection of bidders will be financial: the amount of revenue the concession will generate for SANP over the contractual term. However, it is recognized that there is a need to incorporate other, non-financial criteria in the bid evaluation process.

The recipe for transparency is to provide all bidders with the same information before the bid; pre-agree the major contractual points among all bidders; tie down the non-financial aspects of the concession as contractual obligations; and have a clear and well-defined method of evaluating the bids. All bidders will be faced with the same length of contract, development conditions, allowed activities, environmental safeguards, *etc.* The obligations then become the same for all bidders, and the bids are differentiated solely by pre-agreed criteria.

Bidders will be provided with draft contractual documents prior to the bid. Their individual and collective reactions to the documents will be heard and, to the extent possible, changes will be made to the final documents to respond to bidder concerns. Once finalized, these documents are binding, however; and they cannot be changed thereafter.

### ***Financial Arrangements***

There will be a *fixed annual element* in the concession fee formula, which must be paid regardless of actual revenues. In addition to the fixed annual element, in their financial bids, bidders will also bid on fees to be paid as a percentage of future turnover. Fees payable to SANP for any given year will be *the greater of* the fixed fee or the percentage of turnover. The evaluation process then discounts this stream of revenues to a Net Present Value (at a discount rate chosen by SANP and disclosed to the bidders).

In addition to the financial bids, the bidding methodology will also evaluate other, non-financial aspects to the bid proposal. As well as ensuring that the business plan is well founded, and that environmental criterion have been understood and will be respected, empowerment will play an important role in the evaluation.

Bidders must submit the following documents in their bid submissions:

- A Price Offer, strictly according to the wording to be provided by SANP in the bidding instructions;
- A Business Plan, indicating detailed proposals for establishing the concession, number of beds, anticipated market, revenues and occupancies, historical track record of sponsor, capital investment, employment projections, etc. (detailed format to be provided by SANP);
- Financial projections, showing total projected revenue (with underlying assumptions), projected fee income to SANP, operating costs and net profits;
- Signed Memorandum of Understanding (format provided by SANP); and
- Fully executed Bid and Performance Bonds, as per format provided by SANP.

SANP will allow one week for evaluation of bids, after which the winning bidder will be declared, and invited to commence discussions with SANP to finalize and execute the contractual documents. In case the winning bidder is unable to execute the project according to the terms contained in the tender documents, the Bid Bond will be called, and SANP will move on to hold discussions with the second-placed bidder.

The technical and other appraisals will be done first, and then the financial bids will be opened in public, permitting instantaneous announcement of the winning bidder.

### ***Bid and Performance Bonds***

The bid submissions will be backed by a Bid Bond, which will be refunded to the bidder if (i) the bidder loses; or (ii) the winner signs all the contracts within a reasonable closing period. This is to ensure that all bidders demonstrate their financial commitment to the bid process, and do not submit inflated bids that they are not able to fulfill.

In order to enforce compliance with the terms of the concession by the winning bidder, they will be required to post a Performance Bond, to be valid throughout the duration of the concession. This could be in the form of an irrevocable letter of credit from a bank of sufficient standing, immediately callable upon the failure of the concessionaire to respect financial or other obligations contained in the concession contract. The Performance Bond will be an amount equivalent to 10 percent of the estimated capital cost of the total facility.

### 2.3.3 Zambia

The Zambian wildlife agency is going through a restructuring process that has seen the formation of a parastatal known as the *Zambian Wildlife Authority* (ZAWA). To generate sufficient income, ZAWA is re-examining its options regarding various hunting and photographic concessions with a view to attracting private sector investment.

ZAWA has adopted an approach that is similar to that in Botswana and South Africa where potential bidders are required to prequalify for the right to bid for a concession in a national park. Stringent conditions have been set that require the bidders to provide a site plan and a detailed business plan.

The *Tourism Concession Agreement* is a comprehensive document that details the fixed and variable charges, the level of capital investment (as described in the business plan) and payment schedule. The agreement does not bestow any land rights or ownership of rights whatsoever on the concessionaire and the Grantor will assume ownership of all infrastructure build on the site at the end of the agreement.

The rights of the concessionaire are limited to carrying out the tourism services as outlined in the business plan without interference from ZAWA, including the *right to dispose or transfer the rights of the agreement to a third party subject to conditions set by ZAWA*<sup>7</sup>.

The obligations of the concessionaire are equally spelt out in great detail, emphasizing that the concessionaire shall establish best business practices and procedures intended to incorporate sustainable development strategies. This includes capital investment, preventative maintenance and repairs, training and manpower development.

The rights of the grantor are guaranteed by the relevant legislation that retains the right to inspect the operation at any time. The Grantor also has the right to change the fee structure *etc.* in consultation with the concessionaire but only implemented after due notice of one calendar year.

The obligations of the grantor are to ensure that the park management systems and procedures are maintained and conducive to sustainable tourism development. Other major obligations include acknowledging receipt of payments and responding to requests from the concessionaire to undertake developments that will enhance the tourism activities. A key obligation of the

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<sup>7</sup> This position is not normally adopted in short to medium term concessions because it allows the concessionaire to sell the concession to a third party who may not be in favor with the government. However, this option is necessary where long-term concessions are involved.

grantor is to guarantee not to build or allow building of any permanent tourism structures within a 5-kilometre radius of the existing tourism site.

### **2.3.4 Zimbabwe**

Two approaches are used in Zimbabwe. First is the auction system that is favored by the Department of National Parks and Wild Life Management (DNPWLM) for concessions in safari hunting areas. In contrast, Rural District Councils tend to favor the tender process that usually involves some form of “joint venture” arrangement.

#### ***Auctions for Concession Hunting Areas***

In this approach the DNPWLM sets a guaranteed minimum quota for a period of 3 to 5 years for a concession area, including the terms and conditions of the agreement. Potential bidders are then required to bid in an open auction system for the *right to hunt* for the full period of the agreement. This amount is paid up front to the DNPWLM in full prior to the start of the concession. In addition, the winning bidder is also required to pay 30 percent of the value of the license fees for all the animals on the guaranteed minimum quota with the balance being paid as and when they are shot (or wounded). Any additional animals offered on the quota are paid for in the same way.

This can be summarized as follows:

- *Right to Hunt -Once off payment for the duration of the contract (established at auction)*
- *Trophy fees -Paid for each animal shot/wounded (Minimum quota guaranteed)*
- *Annual Resource Use Fee -Calculated at 30 percent of the value of the Minimum Quota*

#### ***Joint Venture Contracts (Hunting and Photographic)***

The approach adopted by the RDCs has been described above (see section 4.4.3). The first step in this process is to advertise the concession area and invite bidders to submit tenders. In some cases, the RDC may stipulate that the bidding companies demonstrate that “indigenous Zimbabweans” hold 50 percent of the shareholding.

The tender procedure is not as detailed as that adopted by the Botswana authorities, but does require that the bidders prepare a detailed description of the proposed “joint venture.” This will include details of the type of hunting operations (and/or photographic operations), infrastructure developments, level of investment, contributions to anti-poaching and PAC and the envisaged contract arrangement.

An important aspect of the proposal is the proposed financial arrangements. The system widely adopted in Zimbabwe Communal Lands is the *Percentage of Turn-over System* in which the concessionaire pays the lessor an agreed percentage of his annual turnover from the concession. This is usually subject to a guaranteed minimum in order that the lessor is protected from situations where the operator fails to sell the full quota. In return the lessor has to guarantee a certain minimum quota, which gives the operator some comfort that he will not be required to pay the guaranteed minimum in a situation where the animals are not available through excessive illegal hunting or drought.

It is not unusual for the potential bidders to offer up to 45 percent of all revenues generated by the venture to the RDC for a hunting concession<sup>8</sup>. In addition, some bids are prepared to pay up to 80 percent of the predicted fee as a guaranteed minimum up front at the beginning of each season. The direct financial arrangements for a concession can be summarized as follows:

| <b>Financial Arrangement</b>                   | <b>Amount (US\$)</b> |
|--|----------------------|
| Total Income from 600 Hunter Days              | 375,000              |
| Total Income from Trophy Fees                  | 300,000              |
| <b>Total income from the Venture</b>           | <b>675,000</b>       |
| Share of Revenue due to RDC (45 percent)       | 303,750              |
| Guaranteed payment (80 percent) of Revenue Due | 243,000              |
| Balance Due                                    | 60,750               |

RDCs' may receive up to 20 offers for a concession and therefore the tenders need to be assessed. In this regard, RDCs have received extensive training from NGOs such as WWF in recent years and this process no longer presents a major problem for the RDCs. Virtually all the RDCs have developed set procedures for dealing with this issue, and although there are concerted efforts to maintain a transparent environment, the process can still be politically influenced.

The advantages of this system can be summarized as follows:

- By quoting in US\$, inflation in the domestic currency and changes in quota composition are automatically adjusted for.
- The lessor benefits from profitability of the operation in good years, but is protected from losses in bad years.

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<sup>8</sup> The percentage offered for photographic concessions is usually much lower and ranges from 6 – 10 percent.



- Lessor has the incentive to properly manage the concession and its wildlife, which can lead to an increase in quotas and thus and increase in revenues for the lessor.
- The lessor can become more involved in the operation than would be possible under a straight lease.

The only significant disadvantage is that there is an incentive to the concessionaire to under-declare his revenues. This can be minimized by insisting than independent auditors prepare an audit certificate.

### **2.3.5 General Conclusions on Principles of Allocation and Pricing**

With regard to hunting operations, there is a tendency for the authorities to split the fee to operate a concession between a *concession fee* and a *trophy fee*. This is meaningless to the potential bidder because it is the *total price* that matters to the operator. How he recovers this money to pay the concession fee is of little concern to the lessor, and it has been suggested that the two prices be lumped together. The problem with this suggestion is the question of how to adjust the concession price for inflation or for changes in the quota structure.

Nonetheless, on the basis of the foregoing discussions, it can be concluded that the following principles should be applied in devising systems for allocating access to hunting and photographic concessions, and for determining the price of these concessions:

- The system should to a maximum extent clear the market.
- Competition between operations should be fostered.
- Systems should be practical and enforceable.
- Where possible, systems should be transparent, and avoid any command allocation decisions.
- Unfair competition between the State and the private sector should be avoided to the maximum extent possible.
- Investment in, and development of, the industry should be encouraged.
- Revenues from the hunting/photographic operations should be maximized, subject to environmental and ecological safeguards.
- Operators securing concessions should be given security of tenure.

- The systems for regulating the industry must be appropriate, and conducive to further development of the industry.
- It is easier to regulate the industry by minimizing the rules and maximizing the penalties for contravention.

## **2.4 Pros and Cons of the Existing Systems in Awarding Contracts**

The existing system of awarding hunting blocks entails applicants submitting their applications to the WD, which compile and screen the applications based on:

- Company legal status
- Type of venture (local, foreign or JV)
- Capital and working equipment commitment.

An Advisory Committee on Block Allocation (composed of lawyers, politicians, retired civil servants and private business people *etc.*), appointed by the Minister of Natural Resources evaluates the applications and provides recommendations to the Minister for approval. The Director of Wildlife Department is both the Secretariat to the Advisory Committee and advisor to the Ministry's Permanent Secretary. The Permanent Secretary is the main adviser to the Minister on all technical issues.

The contract is awarded for a five-year period with the option to renew, and there is no limit on the number of blocks awarded to a single tour operator. The Block Fee for each hunting block is set at US\$7 500, which has not changed for at least ten years.

Once allocated a block, the outfitter is required to pay all the necessary fees, and apply for hunting permits for all clients that intend to visit the area. The outfitter is also required to enter into an agreement with the Director of Wildlife that outlines the responsibilities of the government and the outfitter.

### **2.4.1 Pros**

The Advisory Committee on Block Allocation serves as a filter to ensure that hunting blocks are only allocated to qualified operators. This means that there is some form of prequalification in place and to a certain degree, the process can be considered a transparent procedure (applicants who are not awarded contracts have a right of appealing to the Minister). The system offers security of tenure for up to 5 years, but there is still a high level of risk that the Director can revoke the agreement.

### **2.4.2 Cons**

The most serious constraint of the Tanzanian system of awarding tenders is the fact that it is not conducive to maximizing revenues, and there does not appear to be any incentive for the WD to increase its revenue generation. This situation may now change given that local communities will be in a position to negotiate directly with the private sector. Nonetheless, the fact that the WD has set the concession fee value of a hunting block at US\$7 500/year and maintained this value for more than 5 years has probably seriously under-valued the hunting industry in Tanzania. An attempt to change this position by imposing a higher fee will probably meet with stiff resistance from the local industry, unless this fee is established through some form of open tender.

This strategy of setting the “block fee” also jeopardizes the position of local communities who will be seeking the market value for “their” wildlife resources. They will not be able to compete with government if the prices are lower on government controlled Game Reserves.

Secondly, there are significant dangers attached to the requirement by the WD that insist that operator’s shoot 40 percent of their quota and generate revenue to the value of 40 percent of the quota. This policy will only encourage operators to over-hunt the quotas in order to meet this requirement, and therefore there is the risk that the wildlife populations could be over-hunted. If this strategy is extended to communal areas there is the risk that the wildlife resources in these areas could be exploited in an unsustainable manner and thus will not be in the best long-term interests of the community.

Thirdly, under the current system a single outfitter can be allocated more than one hunting block. The implications of this are:

- It prevents new players from entering the industry and tends to create monopolies.
- Outfitters who control several blocks may not use these as efficiently and thus prejudice government of foreign currency earnings.

- Competition for the blocks is reduced with the result that the maximum revenue for the blocks may not be realized.
- This system does not clear the market since the allocations are made on the basis of arbitrary rationing by the authorities.

Other issues that are detrimental to this method of allocating contracts include:

- Difficult for new entrants to secure contracts
- Difficult to revoke block contractors as there are no laid-down tourist hunting regulations
- The process can be subjected to political pressures
- Because the blocks have been under-valued, the government structures responsible for management have been unable to keep pace with developments in the wildlife industry.
- Associated with this have been poor budget allocations with the result that the infrastructure has deteriorated, and effect law enforcement is not conducted. The result has been a decline in wildlife populations.

## 2.5 Security of Investments

Under the proposed “joint venture” arrangement, it is envisaged that the one party of the venture (*i.e.* the community) will not assume any of the financial risks. Security of investments will therefore be the responsibility of the entrepreneur. Therefore, only investors willing and able to tolerate the potential loss of their investments should consider taking part.

However, this arrangement is not conducive to maximizing returns from the joint venture and it is for this reason that it is important that the investor is offered security of tenure. In addition, the duration of the agreement should provide the investor with confidence that he will recover his investments during the course of the agreement. It is for this reason that hunting joint venture agreements in Zimbabwe include a guaranteed minimum quota.

A further issue that must be taken into consideration is the manner in which the agreement is terminated. Both parties require a reasonable period of time to disengage from the agreement so as not to prejudice their investments. Of critical important here is the termination clause of the agreement—communities cannot summarily cancel an agreement at short notice without just cause and *visa versa*. To protect both parties in the event that this does occur, there are usually fairly stringent clauses that require one or other party to the agreement to pay full compensation.

## **2.6 Access Rights of Local Communities and Enforcement of these Rights**

Access rights of local communities should be clearly described in the background information provided to the potential bidder before submitting their proposals. These are then enshrined in the agreement and could include:

- Access to water
- Access to firewood and other forest products
- Access to carcasses and subsistence hunting quotas
- Access to cultivated lands and right of way

### **2.6.1 Mechanisms to Protect Community Rights**

As pointed out above, the rights of the community are usually identified in advance of the joint venture being advertised. These are then incorporated into the agreement and thus are legally binding on both parties. Penalty clauses and remedial actions are included in the agreement that allows the community to rectify any infringements of these clauses. This can range from a simple financial payment to temporary cessation of the hunting and/or photographic operations of the outfitter until the issue at stake are resolved.

### **2.6.2 Mechanisms to Create Awareness of these Rights**

Creating awareness centers on developing robust lines of communication with all the various stakeholders in the agreement. This involves the Village Council as well as individual villagers in the concession area. It is for this reason that “joint venture management committees” are established under the agreements. This committee acts as the forum through which both parties can discuss the various issues associated with the venture.

## **2.7 Areas of Potential Disputes and how these may be Resolved**

Potential areas of dispute could involve the following:

### **2.7.1 Payment**

This potential area of dispute arises in situations where the community is not fully conversant with the payment structure for the agreement, especially those that require the outfitter to pay a percentage of the gross income. Other areas of potential conflict include misunderstandings of payment schedules, late payments and failure to agree on incremental price increases (especially where this involves trophy licenses).

It is important therefore that the payment schedule is clearly defined in the agreement, and that both parties have a thorough understanding of the terms and conditions of the agreement.

### **2.7.2 Quotas and quota setting**

The size of the quota and the animals included on license presents a potential area of dispute because this determines the profitability of the hunting operation. An outfitter is not able to market the quota effectively if it is constantly changing from one year to the next. Furthermore, cognizance must be taken of the outfitter's recommendations regarding increasing or decreasing the quota for specific species. After all, they spend virtually every day in the field and thus are usually in a better position to provide an opinion regarding the composition of the quota.

One way to resolve any differences of opinion is to guarantee a minimum quota that will not be reduced during the duration of the agreement, but can be increased if this is warranted. It is also important that the outfitter is informed about the quota well in advance of the hunting season so that he has sufficient time to market the quota.

### **2.7.3 Grazing and Cultivation**

Outfitters who are prepared to risk substantial investments in developing a wildlife-based enterprise in a WMA will require some surety that cattle or people wanting to cultivate crops will not invade the area. This is especially the case during the tourism season when such activities can disrupt game viewing or cause the wildlife to move into different areas and away from the disturbance.

The outfitter must be able to meet with the Village Council (or AA representatives) to address these issues should they arise, and the Council must be in a position to take action against the people responsible for these activities.

### **2.7.4 Privacy**

Outfitters based in village areas must accept that they will encounter local people during the course of their safaris. However, although a limited amount of local movement will be tolerated, foreign paying clients who want a "wilderness experience" are not usually prepared to have their privacy invaded by large numbers of people. This can become a rather sensitive issue if not managed correctly. Again, this issue can be addressed through the "joint management committee" meetings.

### **2.7.5 Illegal hunting and Problem Animal Control**

Outfitters who have purchased the right to hunt a quota of animals in a WMA will not tolerate illegal hunting by the local communities, especially if this impacts on their safari operations.

Foreign clients are not prepared to pay top dollar for an area where there is evidence of illegal activity. If the village is to allow subsistence hunting, this must be carefully planned in close co-operation with the outfitter.

Similarly, if the village adopts an irresponsible attitude regarding problem animal control *e.g.* killing trophy animals, or allowing excessive numbers to be hunted, can cause misunderstandings between the operator and AA.

To resolve these problems requires the full commitment from the AA/Village Council to control these activities. Where this is necessary, the circumstances must be fully explained to the outfitter and if possible the outfitter must be given the opportunity to take advantage of the situation.

## **2.8 Mechanisms for Contract Enforcement**

As mentioned above, it is essential that the agreements contain clauses that are binding on both parties. Furthermore, the agreement is structured in a way that gives the AA powers to either suspend the agreement until the issue has been resolved, or to take the issue before a court of law.

In South Africa, the winning bidder is required to post a Performance Bond that is held by the AA for the duration of the agreement. If the concessionaire fails to meet his financial or other obligations contained in the agreement, the lessee is entitled to call in the Bond, claim the money and cancel the agreement.

## **2.9 Institutions Responsible for Monitoring and Monitoring Parameters**

The issue of identifying institutions responsible for monitoring any joint venture arrangements is complicated by the fact that three different government bodies are involved. The Ministry of Lands deals with any matters relating to village land while administrative issues are the responsibility of Local Government. All matters relating to wildlife will be the responsibility of the Wildlife Division. The following table attempts to illustrate the linkages between these three government bodies and the different parameters each would be required to monitor<sup>9</sup>.

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<sup>9</sup> The Draft WMA Guidelines also outline the responsibilities of the various institutions (see section 2.1)

| <b>Government Institution</b>  | <b>Monitoring Parameters</b>   |
|--|--|
| <b>Authorized Association</b><br>Enter into MoU with the Division of Wildlife<br>Responsible for day-to-day administration of joint venture agreement. | <ul style="list-style-type: none"> <li>• Compliance with the agreement (including MoU)</li> <li>• Payments made to AA</li> <li>• Outfitter activities in the field</li> <li>• Adherence to hunting quotas</li> <li>• Illegal hunting of wildlife</li> <li>• Employment of local staff</li> <li>• Occupancy levels at safari camps</li> </ul> |
| <b>Village Council</b><br>Responsible for activities of the AA   | <ul style="list-style-type: none"> <li>• Receipt of funds from the Venture</li> <li>• Payment of dividends</li> <li>• Resolution of conflicts</li> <li>• Setting of hunting quotas</li> <li>• Minutes of Joint Management Committee Meetings</li> <li>• Adherence to environmental safeguards</li> </ul>                                     |
| <b>District Council</b><br>Responsible for Village Council   | <ul style="list-style-type: none"> <li>• Implementation of social service projects</li> </ul>  |
| <b>Wildlife Division</b><br>Responsible for wildlife management in WMAs  | <ul style="list-style-type: none"> <li>• Status and distribution of wildlife populations</li> <li>• Setting of quotas and quota utilization</li> <li>• Activities of professional hunters and guides</li> </ul>  |

## 2.10 Enforcement of Environmental Parameters

The process of concessioning out land for the exclusive use of private sector safari operators raises a number of issues regarding long-term environmental management and monitoring of these areas. TANAPA has developed comprehensive procedures for the development of eco-tourism ventures within the national parks (DALP – Development/Action/Lease Procedures, July 1995). Section IV of these procedures provides an environmental impact checklist that the potential bidder is required to complete before the project proposal is considered by TANAPA. Enforcement of the resulting environmental management plan is the responsibility of TANAPA.

This case of the AA, it will be necessary to develop its own environmental safeguards and undertake periodic evaluations to re-assess compliance with environmental covenants. This means that the AA will have to develop some basic environmental policies, standards and guidelines to guide its activities.

Some of the parameters that will have to be considered include:

- Site Carrying Capacity



- Construction Activities
- Visual Impact
- Roads and Tracks
- Biosphere Modification
- Support Infrastructure
  - o Electricity
  - o Potable Water
  - o Artificial Water Features
  - o Communications
- Waste Management
  - o Liquid Wastes
  - o Solid Wastes
  - o Air emissions
- Buildings and Structures
- Fire Management
- Guest Activities and Safety
- Off-road Driving

### **2.10.1 Supervision and Monitoring**

All above issues will require careful supervision and monitoring by the AA (if it has the capacity). Monitoring can be done in accordance with guidelines agreed to by both parties and incorporated in the agreement. Regular monitoring visits to the WMA by responsible AA member(s) should take place at any time and to any part of the WMA. Environmental issues can also be discussed at the “joint management meetings” and resolved to the mutual benefit of both parties.

## **2.11 Provision of Social Services by Entrepreneur**

The prospect of entering some form of agreement often raises the expectations of local communities who anticipate that the entrepreneur will provide a wide variety of social services. Furthermore, entrepreneurs are often guilty of canvassing the support of local communities by promising to provide various social services that they are unlikely to honor.

The issue of providing social services must therefore be approached with great care as this is a sensitive issue that can turn a community against adopting wildlife-based activities as a form of land use. The design of the tendering system must therefore take this into account, and ensure that the bidders have the financial and institutional capacity to meet their commitments. It is also essential that the review committee critically examine the type of social services that are being offered to determine whether these are suitable and whether they can be sustained once the project ends.

In many instances the AA (or its equivalent) will prefer to assume the responsibility of providing social services using the finances provided by the venture. This is not to say that the individual concessionaire should not develop linkages at his own initiative with the community, but rather that the provision of social services should be closely coordinated to ensure that the expectations of the community are met.

### **2.11.1 Monitoring and Measuring Social Impact**

Where concessionaires have agreed to provide social services, they will be required to agree in writing to the key indicators to which they have committed prior to operation of the concession. During the term of the concession, they will be monitored for the extent to which they have complied with quantifiable targets set at the beginning of the concession period. These indicators could include measures such as:

- Involvement in youth environmental education
- Contribution in kind and cash to community projects
- Schools development
- Water development.

It must be recognized though that the development of social services is often fraught with difficulties and unforeseen risks. Success or failure of a project is sometimes beyond the control of a promoter. It is therefore important that this is not regarded as a provision to terminate the concession.

## 2.12 Use of Local Labour

A standard norm when assessing joint venture proposals is to examine the number of employment opportunities that the tenderer envisages creating. This trend is also seen in the agreements issued thus far in Tanzania. The Wildlife Division includes a clause in their agreement that the outfitter undertakes not to employ persons not ordinarily resident in Tanzania for manual and casual labor (*i.e.* drivers, skimmers, trackers, gun bearers, cooks, camp staff, general labourer *etc.*).

From the point of view of the outfitter, there is a tendency to employ staff on contract during the season and then pay a retainer to the staff during the off season. In this way the outfitter is able to retain staff that he has trained and the employees are assured of an income throughout the year.

As the tourism industry develops in a community WMA it is possible to develop other tourism related employment opportunities such as craft markets, cultural village tourism and supplying local commodities to the camps (vegetables *etc.*) There are also opportunities for the involvement of skilled and semi-skilled workers from nearby communities who can maintain electrical and water supply systems, or undertake construction and routine building maintenance.

There are a number of indicators that can be measured to assess the use of local labor in a venture. These include:

- Number of staff employed from neighboring communities
- Quantity and value of supplies purchased from local communities (vegetable gardens, *etc.*)
- Number of contracts with, and value of services obtained from, local communities (e.g. repairs and maintenance to roads, camp construction, provision of firewood *etc.*)

## 2.13 Mechanisms to Ensure Local Community Equity in Investments

As discussed above, there is a high level of risk associated with a community investing in a tourism venture and where possible this risk should be kept to a minimum. There are, however, certain circumstances where and local community can invest in a venture and thus gain a certain degree of equity. This usually applies in instances where substantial investments are made in safari lodges (*i.e.* 40 or more beds), but very rarely in ventures such as tourist hunting, tented camps or mobile safari operations.

### **2.13.1 Mechanisms to Ensure Community Equity in Investments**

The simplest method to ensure equity in investments is through the acquisition of shares in the company. Various options are available to the community:

#### ***Direct Investment***

The community, through its Authorized Association, directly invests in the company and buys a percentage of the shares. This could be as high as 49 percent but depends on the level of investment and the skills and capacity that the community brings to the company.

#### ***Share Allocation***

Under this option, the community is awarded an agreed number of shares by the company. The community does not have to invest any capital in the company at the beginning of the project, but is given the option to purchase the shares from the concession fees that would normally be paid to the AA.

This means that the AA may elect not to receive any direct income from the venture for a number of years, but it will gradually assume a greater interest in the company as time goes by. This option is generally only suited for long-term projects (say 25 years) and could apply to a major hotel-type development.

#### ***Employee Share Ownership Scheme***

Under this scheme, the employees are awarded a certain number of shares depending on their employment level. Depending on the profits, the company pays dividends to the shareholders each year. On the leaving the company, the shares are purchased by the company and re-issued to the new employee. The incentive of this scheme is therefore to encourage the employees to perform well and remain in employment with the company. The more profit the company makes and the longer they remain in employment, the greater are the returns.

### **2.13.2 Level of Local Communities Contribution in the Investments**

The level of community contribution in the investment will depend on the circumstances. The key issue here will be the length of tenure offered to the investors. Investing in short-term ventures of 5 years or less is unlikely to be of much benefit to the community. In such circumstances it is better for the community to request a guaranteed return rather than risk investing their capital in the venture. In this way the community can address its immediate socio-economic needs.

In contrast, long-term projects (such as the construction of a safari lodge/hotel) are probably more attractive. The level of investment will depend on what the entrepreneur is willing to

forego but is unlikely to be as high as 50 percent. This would imply that the community has the capacity to provide management and administrative skills to operate the company and thus is prepared to equally share the risks involved in the venture.

The alternative is for the community to provide all the capital to establish a safari venture and then seek the services of a manager to run the operation *i.e.* reverse the roles. The risk here is that unless the community thoroughly understands the business of running a safari operation, there is a fair chance that the venture will run at a loss and the returns to the community will be minimal.

With regard to hunting operations, some operators in Zimbabwe have been prepared to offer the community up to 45 percent of their gross income, which in effect is offering the community a substantial stake in the venture.

### **2.13.3 Value of Community Contributions**

Placing a value on the contributions made by a community is extremely difficult. Consideration has to be given to:

- The “quality” of the WMA as a tourist destination (species of wildlife, numbers, wilderness area, access *etc.*)
- The length of tenure offered. Short-term tenure is less attractive than long-term tenure.
- Magnitude of the tourist operation. An area that can support a large number of tourists and offer a wide variety of activities (walking, game viewing, boating, hunting *etc.*) is more likely to attract investors than an area that does not have such opportunities.

It is for these reasons that it is important to adopt a tender system that tests the market. Furthermore, the proposal must be made attractive to the potential investor and create competition amongst the potential bidders. Once the baseline market value has been established (through an open auction system or tender), and the WMA develops a reputation as a prime tourist destination, then it is possible to gauge the value of the area and thus the value of the community contribution.

## **2.14 Provisions that must be Incorporated by Reason of Applicable Law or Policy**

Provisions of the Joint Venture must take into account provisions of the law that are intended to protect certain categories of persons in the process of entering into contractual undertakings.

The relevant and applicable law that governs contract undertakings in Tanzania is the Law of Contract Ordinance, Cap. 433. This law stipulates conditions that have to be met in order for

contracts to be legally binding. For purposes of the Joint Venture (a form of contract), the provisions of the Contract Law that need to be focused on are those relating to Consent of Parties. This implies that the issue of “*consensus ad idem*,” (a meeting of minds) between the Parties to the Contract. Where there is no consensus, the contract would not be valid. Further, the consent of the Parties must not be obtained by fraud or by misrepresentation of facts.

There also exist certain principles of the Law of Contract, which though not specifically entrenched in the provisions of the contract law have to be considered. In this respect, therefore, these have to be borne in mind while formulating the Joint Venture Agreements. Every effort must be made to ensure that the Parties to the Agreement fully understand the implications of the Agreement. This is especially important where one of the Parties to a contract is at a disadvantaged position. For example, say by reason of illiteracy, such person or group of persons could not comprehend and understand the contents or implications of the contract. Where such a situation arises, such Party/ies may invoke the defense of “*Non est Factum*” to seek the protection of the law. Where a Party/ies to a contract invoke this plea as a defense and prove that the contents of Agreement/Contract being contested were not fully understood at the time of executing such Agreement or Contract, courts in Tanzania have declared such contracts unlawful.

## **2.15 Mechanisms that Guarantee Supply of Local Inputs Needed by Entrepreneurs**

There are no mechanisms to guarantee supply of local inputs (vegetables, meat, building materials *etc.*). A safari operation offering a top quality service must be assured that they will be able to secure their needs on a regular basis. Their reputation will suffer if they cannot provide a top quality service. Therefore, to ensure that local suppliers are able to take advantage of the local tourist industry, they will have to develop a sound business relationship with the tourism venture and ensure that they can supply local top quality products on a regular basis.

## **2.16 Review WPT Policy on Problem Animals**

Section 3.3.12 of the WPT addresses the issue of human-wildlife conflicts that occur in rural areas. The policy recognizes that wild animals do cause damage to property and that human lives are at risk. However it also recognizes that wildlife has an economic value and that rural communities will be able to benefit from this resource through community-based conservation programmes (CBC). In addition the WPT draws attention to the fact that excessive control of problem animals could lead to a reduction in potential earnings for the community. Accordingly, the government does not intend to introduce a compensation scheme for wildlife damage.

Under the current scenario, the control of problem animals is the responsibility of the Wildlife Division through its District Game Officers and Game Scouts. This usually involves the hunting

of dangerous animals such as lion, leopard, hyena, elephant, buffalo, hippo and crocodile. It does not usually involve the problems caused by non-dangerous animals such as baboons, monkeys, bush pigs or animals that local communities are able to deal with in their own right using traditional methods.

Under the WPT, it is envisaged that the responsibility of problem animal control (PAC) will devolve to rural communities operating CBC programmes. The role of the Wildlife Division will be reduced to providing technical assistance to rural communities who have not developed the capacity to deal with this issue, but also actively carrying out PAC when requested to do so by the community.

The WPT also identifies a number of long term strategies that could be implemented to reduce the potential conflict. These include:

- Incorporating PAC animals into hunting quotas.
- Ensuring that those most affected by problem animals are the main beneficiaries of revenue earned from wildlife.
- Explore the use of non-lethal methods (electric fences *etc.*).
- Where practical, capture and translocate animals of high commercial value.
- Increasing the awareness of the economic value of wildlife

The key issue here is the underlying principle of the WPT that devolves management responsibility of areas outside protected areas to rural people and the private sector (Section 3.3.3 (i) and conferring user rights of wildlife on landholders (Section 3.3.3(v)). This provides rural communities with the option of exploring alternative strategies to deal with problem animals in addition to those identified in the WPT. One alternative will be to contractually involve the concessionaire/entrepreneur in management and/or control of problem animals. In essence, this appears to be a fairly straightforward solution however there are a number of issues that must be taken into consideration. Some of these are identified and discussed below:

- Incidence of crop damage occurs at a time outside of the hunting season. This means that the contracted hunter has to maintain a presence in the field through the non-hunting (or closed season). This can be an expensive exercise and not an option that will be easily concluded with the entrepreneur, particularly if this involves maintaining a camp, vehicle and associated staff in the field for a prolonged period of time.

- It is not always possible to include “problem animals” in the hunting quota because very often they are not “trophy animals” (*i.e.* too small, not adult, female animals *etc.*). This strategy is also open to abuse since the quotas can be unsustainably inflated to pacify pressure from the local communities.
- A “problem animal” incident may occur when there are no safari clients available to hunt the animal.
- The “problem animal” may have moved away or back into the protected area by the time that the hunters reach the area.
- Individual villages are not able to report the incidence of “problem animals” rapidly enough for the contracted hunter to take action.
- The incidence of “problem animals” is exaggerated or falsely reported so that the villages are able to take advantage of any animals that are actually killed.

Contracting entrepreneurs to deal with the issue of problem animals in a Wildlife Management Area is therefore not an easy task. Most often the concessionaire is unable to meet their obligations in this regard and this leads to confrontation with the local community. To overcome this, the following strategies have been adopted elsewhere in the region.

- The concessionaire employs a local hunter to deal with problem. This can be negotiated in terms of the contract.
- The AA employs local scouts who are trained to deal with problem animals. The cost of this exercise has to be met from the revenues received from the joint venture. The advantage of this approach is that the community has full control over the operations. The disadvantage is that the system can be abused resulting in PAC becoming an expensive exercise.
- The concessionaire assumes full responsibility for PAC in which case the AA must expect a reduced concession fee.



### **3. Contractual, Policy, Legal And Institutional Issues**

This section provides highlights on some contractual, policy, legal and institutional issues that may arise in the process of negotiating joint ventures/contracts/agreements between AAs and investors/entrepreneurs. The pertinent issues include among the things, changes in legislation, guidelines, and by-laws.

#### **3.1 Contractual Issues**

It would be prudent to point out at the outset that the principle law governing contractual obligations in Tanzania is the Law of Contract Ordinance, Cap. 433. This implies therefore that the provisions of the Agreements to be entered into relating to operations in WMAs between AAs and Investors would have to comply with the provisions of this legislation. What need to be specifically focused on are provisions of this law that relate to consent, a meeting of the minds of the Parties and fraud and misrepresentation. Where the conditions stipulated in regard to the above heads are not adhered to, and then the validity of the Agreements would be jeopardized.

Since the formation of partnerships in the management of resources in WMAs is also envisaged by the draft WMA guidelines, it would be pertinent to point out here that the provisions of the Companies Ordinance, Cap. 212, which relate to the formation, registration and dissolution of partnerships would also have to be taken into account. The requirements provided for by the relevant provisions of this legislation would have to be incorporated in the agreements/contracts/joint ventures between the AA and prospective investors. Specifically, provisions relating to formation, registration and shareholding structure would have to be addressed.

#### **3.2 Policy Issues**

The provisions of the wildlife conservation policy and those of the draft WMA guidelines would have to be addressed when deliberating policy, law and contractual and institutional issues in joint ventures between AA's and Investors. The draft WMA guidelines that emerge as a result of the wildlife conservation policy provide that all contractual undertakings shall be monitored by the District Council on behalf of the AA. This includes negotiating joint venture undertakings. In fact the District Councils would have the overall power to decide whether or not a contract/agreement/joint venture should be entered into between an AA and a prospective investor. The draft WMA guidelines provide that the Distinct Council would have to endorse the agreements/contracts/joint ventures.

It would appear that the idea of having the District Council have some control on the process is intended to ensure that the government monitors the activities of WMAs, which do not have the requisite negotiation skills, with a view to ensuring that they are not manipulated by investors.

This procedure has been adopted in some jurisdictions, for example, Zimbabwe.

However, the fallacy of having District Councils endorse agreements/joint ventures/contracts is that it erodes the concept of freedom of contract of the AA. It also abrades transparency and consequently leaves a lot of leeway for investors to manipulate the contractual process. The arrangement further violates the primary objective upon which the wildlife policy is founded *i.e.* to transfer overall management and utilization of wildlife resources to local community members and the private sector. The role of government will be to oversee the more general aspects of control and provision of basic services and maintaining law and order. Empowering the District Council (essentially a government institution) with supervisory powers of overseeing the contractual process, without a mechanism to check this power, however well intended the objective, is likely to defeat the fundamental purpose of the wildlife policy.

The implication of entrusting the District Council with the ultimate decision-making powers in the negotiating and concluding of contracts/agreement/joint ventures between AAs and investors could have the following effects:

- Diffuse the accountability and stability of the AA
- Result in difficulties in determining the parameters, obligations and liabilities of the parties in relation to the contract/agreement/joint venture
- Encourage corruption, bureaucracy and red tape and;
- Discourage investment in WMAs

Changes in the by-laws made by AAs could also have implications for the joint ventures/contracts/agreements that are entered into between AA and investors. One could rightly argue this fear could be taken care of by having a provision/clause in the agreements/contract/joint venture to take avert this situation. However, under the Local Governments (District Authorities) Act of 1992, the District Council could make by-laws to be applied by villages and ultimately by the AAs. If the District Council is not aware of the existence of contractual arrangements between AAs and investors, it may make by-laws that would have negative implications on such arrangements. It would also be difficult for an investor to hold the District Council liable, as it would be performing a statutory function and would be privy to the contract/agreement.

Although a case may be made for the necessity of involving the District Council in the negotiating processes this should not go to the extent of making it the main actor and consequently overshadowing the principal party to the agreement/contract/joint venture. Rather than having the District Councils as the main players, it would be more prudent to involve them

as observers in the exercise, together with local NGO's and other interested groups whose technical expertise could be tapped on by both parties, especially the AA.

Meaningful investment in WMAs would require that the bargaining plane to be clear of any policy, institutional and legal ambiguities. The disparities between the wildlife policy and the Wildlife Conservation Act, 1974 would need to be addressed. Whereas the policy calls for a tranquil investment atmosphere that is free from excessive government control, the wildlife legislation does not seem to reflect this development. The process that is underway to revise the Wildlife Conservation Act should endeavor to address and redefine, among other things, the relationship, role and place of government institutions (*e.g.* the District Council) in the running of the affairs of AAs, and conflicting legal and institutional frameworks (as pointed out in previous studies).

### **3.3 Institutional Issues**

The main institutions that are envisaged by the draft WMAs guidelines as having a significant role in the agreements/contracts/joint ventures entered into between the WMAs and prospective investors are the following:

- The Wildlife Division
- The Village Assembly
- The Village Council
- The WMA
- The District Council
- Authorized Association (AA)

In their respective varied forms, the above institutions are likely to encounter conflicting mandates as a result of the under the present framework of the draft WMA guidelines. For AAs would in most cases be formed in villages under the provisions of the law governing wildlife conservation. On the other hand, the Village Council and Assembly are grassroots institutions recognized by the Local Government (District) Authorities Act. The composition of the WMAs may include members of the Village Assembly, but it does not necessarily follow that all members of a Village Assembly would be members of an AA. Unless the draft WMA guidelines are harmonized with the provisions of the Local Government (District) Authorities Act, institutional conflicts between AAs and Village Assemblies/Village Councils are bound to occur.

The WMA guidelines also envisage the Memorandum of Understanding executed between the Wildlife Division and an AA. The content of the MOU that is to be executed by these two institutions is, however, not stipulated. This scenario is likely to act as a disincentive to a prudent investor committing his/her resources in undertaking a joint venture/agreement/contract with the AA.

## **4. Access To Professional Services**

The Terms of Reference call for suggestions to deal with the following issues:

- How local communities can access services to provide them with expert advice on contractual issues?
- Indicate what kind of organization(s) could provide these services effectively and efficiently.
- The criteria for selecting a given NGO/private sector organization to provide such services.
- In the event that private sector organizations are not available in country, suggest ways that such organizations could be attracted, with or without the kinds of enticements that would have to be provided by government, donors or both.

This section attempts to deal with these points.

### **4.1 Currently Available Organisations**

Several “joint venture” agreements have been negotiated in Tanzania in recent years. The Wildlife Division has negotiated agreements with hunting companies while TANAPA have brokered agreements with private sector tourism organizations. In some instances entrepreneurs, who have engaged local legal expertise to draw up the final agreements, have initiated the negotiations with communities.

International donor organizations have also facilitated agreements between communities and potential investors. For example the Selous Conservation Program funded by GTZ has recently facilitated an agreement for a lodge site adjacent to the Selous Game Reserve, and the MBOMIPA Project in Iringa has assisted the local community to negotiate hunting rights with the local resident hunting association. NGOs, such as the AWF, have also played a significant role in facilitating negotiations between local communities and the private sector.

These opportunities have arisen as a result of the changing environment in the wildlife sector of Tanzania. This trend is likely to accelerate once the WMA Guidelines have been formally approved.

## **4.2 Organisations Capable of Providing these Services**

In the first instance, organizations such as the Wildlife Division and TANAPA, who have many years experience in dealing with private sector tourism companies, are in a position to assist local communities with the fundamental issues associated with contractual agreements. However, there is a potential area of conflict in this arrangement since both these organizations will in future be competing with local communities for investment from the tourist industry. Similarly, organizations such as the Tanzania Hunters Association, are not in a position to act as brokers because of their vested interests.

To overcome this problem elsewhere in the region, communities have organized themselves into some form of association (for example, the CAMPFIRE Association in Zimbabwe) whose responsibility it is to promote community-based natural resource management (CBNRM) programmes. Associations such as this are thus in a position to contract specialists to assist with negotiations on behalf of their members. However, until such organizations emerge in Tanzania, communities will have to rely on NGOs and the donor community to provide these services in the short term.

In addition, given the growth of CBNRM initiatives in the region, there is an extensive pool of expertise in NGOs such as the World Wide Fund for Nature in Zimbabwe who are able to mobilize specialists either from within their own organization or identify independent specialists in the field. Furthermore, the CBNRM initiative has its own web site where requests for assistance can be posted.

Time did not allow the team to investigate the capacity of the private sector organizations within Tanzania to provide such services. However based on the evidence available and the fact that joint venture agreements have been successfully concluded in the past, it is clear that this expertise does exist. What is needed is exposure to the options available so that both parties can gain experience in negotiating the most financially rewarding arrangement.

## **4.3 Criteria for Selecting Service Providers**

Service providers can be drawn from the NGO/donor community, private individuals or professional financial firms. The criteria for selecting service providers should include organizations (or individual persons):

- They should have no vested interest in the venture. As mentioned above, the WD and TANAPA are capable of providing services, but these organizations will be in direct competition with local communities in future. Their role in negotiating joint venture agreements must therefore be carefully scrutinized.

- They should not be connected financially or professionally with either party.
- They should have experience and expertise in providing advisory services and/or acting as a broker between two negotiating parties.
- They should have a thorough understanding of the business environment in which the tourism industry operates. In particular, they should understand the economic drivers of the hunting and photographic industry so that they can negotiate the most effective and efficient agreement for both parties.
- They should have experience in the philosophy and objectives of the CBNRM initiatives in Tanzania and the region as a whole.
- They should have the ability to incorporate local socio-economic concerns and politics in the negotiations.
- They should have an understanding of “joint venture agreements,” particularly the legal implications of such agreements.

#### **4.4 Mechanisms to Attract Qualified Service Providers**

Service providers will be attracted to any situation where there is a business case. In this situation, there is a great deal of interest amongst communities to embark on joint venture initiatives, and both the private sector and the communities are eagerly awaiting the formal WMA Guidelines.

Given the high level of enthusiasm, it is envisaged that there will be a great demand for the services of professional advisors in the short term as the various AAs become established around the country. Managing this situation will be extremely difficult given the current capacity in Tanzania.

This suggests that there is an opportunity for the donor community to become involved at establishing this capacity within the NGO community in Tanzania. Organizations such as AWF, WWF or the Lawyers Environmental Action Team (LEAT) are suitable conduits to providing these services. In addition, there is the opportunity to organize and develop capacity within the various village council's but this will require a long-term input from both government, donor and NGO community.

## 5. Draft Guidelines And “Joint Venture” Contracts

Whilst there are examples of “joint venture” contracts in Tanzania, very few of these have been negotiated using any formal structures or approaches. With the advent of WMAs, it is envisaged that there will be a rush to develop “joint venture” arrangements throughout the country. However, it is anticipated that the greater majority of these agreements will be concluded with the safari hunting fraternity rather than with the photographic tourism ventures.

Many of the potential WMAs have been operating as Controlled Hunting Areas under the auspices of the WD for several years. These areas are therefore well known and thus the future AAs will not have to market these areas to the hunting industry. However, in the past, the WD set the concession and license fees for the hunting block, and a committee selected the hunting operations. As a result, the market value for these blocks was never established through any competitive tender system.

*It is therefore strongly recommended that the future allocation of the hunting blocks in the WMAs be undertaken through a qualified tender system that calls for separate technical and financial proposals.*

However, in adopting this approach, care must be taken to protect the local communities from unwarranted lobbying by different hunting operations which can lead to a great deal of confusion. Direct contact with communities must be avoided at all costs since it is quite feasible that a community can enter into an agreement that appears to be lucrative but on closer examination is grossly undervalued.

This section provides draft guidelines and contracts on how communities can enter into joint venture with potential investors in the hunting and photographic industry respectively. Examples of “Joint Venture Management Agreements” are provided in the appendix.

### 5.1 Overall Tendering Procedure

The recommended tendering procedure is as follows:

#### ***Identification of WMAs for tendering***

With the assistance of the WD and TANAPA, potential WMAs suitable for tendering as hunting and photographic concessions from within the existing Controlled Hunting Areas (CHAs) and Open Areas are identified. This identification should take into consideration the existence of potential AAs, village land use plans, and the tourism potential of the area (this could include existing tourism operations and/or applications to invest in such ventures).



### ***Formation of Authorized Associations***

Under the Village Land Act and the WCA, Authorized Associations are to be constituted and Natural Resource Committees established. The AAs should then set objectives of how they intend to develop the natural resources in their village areas. This could involve developing a combination of commercial safari hunting, resident hunting and/or photographic safaris.

### ***Formation of Tender Evaluation Committee***

Having identified the potential WMA, the AA should form a Tender Evaluation Committee numbering no more than six individuals whose eventual job it will be to evaluate bids received. This Committee should consist of; *inter alia*, the Village Council, District Council, AA, Community Representative, WD and/or TANAPA. Other potential members of such a committee could include representatives from Local Government and impartial members from the private sector and the tourism industry. Together they should all be able to assess the bids received, but have the mandate to engage professional assistance if they deem that this is necessary.

The responsibility of this committee will be to:

- Determining the duration of the agreement and any special requirements (community development, labor, social services *etc.*)
- Drafting of tender advertisement
- Advertising of tender
- Preparing background information for bidding document
- Sale of Bidding Document to defray advertising and printing costs (say US\$100/copy)
- Setting the terms and conditions of the tender document (*e.g.* separate technical and financial proposal)
- Tender assessment process
- Opening of bids
- Evaluation of bids
- Recommendations to AA and Village Council

## **Formulation and submission of proposals**

Interested bidders are to be given up to three months from date of advertisement to formulate and submit their proposals to the AA.

*It is extremely important at this stage that communities be protected from unsolicited lobbying by potential bidders. Technical and Financial Proposals should be submitted separately in sealed envelopes with both envelopes placed inside one larger sealed envelope. The terms and conditions for submitting proposals should make it clear that proposals will be disqualified if:*

- *The community is canvassed in any way after the tender has been announced*
- *The company details and name(s) of any shareholder or director are revealed in the technical proposal*
- *Potential bidders cannot prove that they have purchased original Bidding Documents*
- *Proposals are submitted by fax, telex or e-mail*

## **Negotiations with prospective concessionaires**

Following the announcement of the winners, the AA enters into formal negotiations with the prospective concessionaires. These negotiations should not be hurried. This is to ensure that both parties are confident that they fully appreciate the implications of the agreement before a formal offer is made, culminating in the signing of the agreement.

## **5.2 Specific Recommendations Regarding the Tender Process**

In order for the tender process to run smoothly, the following specific recommendations should be considered.

### **5.2.1 Provision of an Information Sheet for the Concession Area**

There is a need to provide relevant information on existing WMAs and potential new areas where local communities wish to attract investment from safari operators. This is particularly important if the communities wish to attract investors from outside Tanzania, and where a substantial investment is envisaged in a safari lodge or some other long-term project. This can best be done through the production of an **Information Sheet** for each of the concessions on offer.

The Information Sheet can be printed for distribution, but it can also be posted on a web site (such as the South African initiative for the Kruger National Park). Being PC-based, these sheets can be easily reproduced and updated as required. The Information Sheet would provide a range of information on the specific WMA or concession site and would include:

- The size and location of the site
- Brief description of the WMA and its development
- WMA management objectives as defined by the AA
- Social development expectations of community
- Any specific rights and conditions attached to the concession
- Attractive features (scenery, flora and fauna) and unique selling points
- Local climate
- Health considerations (malaria, tsetse fly *etc.*)
- Existing developments (if any)
- Support infrastructure (if any)
- Type of operation envisaged (hunting, photographic *etc.*)
- Potential tourist activities (sport hunting, game viewing, walking/hiking safaris *etc.*)
- Indicate minimum hunting quotas available (in the case of a hunting concession area)
- Indication of minimum fee structure (fixed, variable, trophy fees *etc.*)
- Duration of concession being offered
- Tender procedures (*e.g.* separate technical and financial proposals)
- Available incentives
- Contact details.

### 5.2.2 Bidding Document

The following example of a **Bidding Document** has been drawn from experiences in Botswana and Zambia<sup>10</sup> where both hunting and photographic concessions have been tendered using this format. The structure and content has been adapted from these examples to illustrate what the Bidding Document would contain.

No doubt this will require editing to suit the Tanzanian circumstances, *however it is strongly recommended that a “standard” Bidding Document be developed for use by AAs throughout the country. This will greatly facilitate the assessment of tenders by the review committees and introduce consistency in the tender process.*

The general structure of the Bidding Document is given below.

- Title page
- Table of Contents
- Part I – Invitation to Tender notice
- Part II – General instructions for bidders
- Part III – Special instructions for bidders
  - o Language to be used
  - o Contracting agency
  - o Conformance to Laws and Regulations of Government of Tanzania
  - o Documents required from Bidder
  - o Disclosure of interest
  - o Enquiries
  - o Structure and content of proposal
  - o Selection process to be followed

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<sup>10</sup> The authors have drawn on an example developed by Philip Johnson for the Zambian Wildlife Authority (ZAWA)

- o Evaluation criteria and scoring system to be used
- o Duration of concession on offer
- o Expected commencement date of concession
- o Requirement for performance reviews
- Part IV – Annexes
  - o Specimen Tourism Concession Agreement
  - o Financial tender form
  - o Hunting quota and minimum trophy fees
  - o Sketch map of location of site/sites (for photographic concessions)
  - o Brief description/s of site/sites being tendered (for photographic concessions)

It is not possible to go into any great detail with regards every section, however, it is necessary to comment on certain sections some of them in detail. These include the following:

### ***Part I – Invitation to Tender notice***

The Invitation to Tender notice should be a word-for-word reproduction of what appears in the advertisement that is placed in the printed media. This is to ensure that a smooth and unambiguous linkage between the advertisement and the Bidding Document those potential bidders receive.

In general, Part I includes:

- a brief description of the WMA being tendered,
- where bidding documents can be obtained,
- to whom and where bids must be submitted and by when,
- when and where the bids will be opened and,
- a disclaimer from the AA responsible should the entire tendering process be cancelled.

## ***Part II – General instructions for bidders***

This section states that all bids must conform to the instructions in the Bidding Document, gives the person (Chairman of the AA) and address to whom the bids must be addressed, where they should be deposited, the closing time and dates for receipt of bids, the manner in which the envelopes are submitted and the date, time and place when the bids would be opened. The AA can also include a brief description of the purpose of the tender (*e.g.* the AA intends to enter into a joint venture arrangement with a safari company to operate hunting safaris, or it intends to lease a site to a photographic operator *etc.*).

The rights and conditions of the AA and potential bidder should also be clarified here. For example, is the tender open to foreign-based companies, whether the agreement will be renewed, and rights of the safari operator (*e.g.* company will have exclusive rights to conduct hunting and/or photographic safaris).

The conditions of the tender could include specific reference to the community retaining their traditional rights to the whole area for the purpose of collecting firewood, building material, grazing cattle, retention of meat, retaining a portion of the quota for their own subsistence use *etc.*

## ***Part III – Special instructions for bidders***

There are a number of important comments that need to be made here.

- The Language to be used in the bids must be English.
- The Contracting Agency would be the AA responsible for the WMA
- Enquiries should be directed to the Chairmen of the AA (or Natural Resources Committee) with both the enquiries themselves and the replies being copied to all bidders.
- The Proposals that are eventually submitted by the bidders to the AA will undoubtedly differ in style, content and detail. However, the Bidding Document must set out to guide bidders as regards the structure of their proposals and the headings under which the proposal is written and presented. This will be of practical importance when it comes to evaluating the proposals.
- The Technical Proposal must NOT contain any reference to the tenderer, its directors, shareholders or its employees nor any reference to the financial offer. Failure to adhere to this stipulation will result in disqualification.

- The tenderer is required to provide clear concise statements regarding the social, ecological, economic and management objectives of the joint venture.

The tendering procedure will require the bids to be submitted in two separate parts, namely, the Technical Proposal and the Financial Proposal. In light of this, the suggested structure for each proposal is given below.

### **5.2.3 Suggested structure of Technical Proposal**

#### ***General description of intended operation***

##### *Site and building plans*

- Sketch map of area
- Site plan and layout of camp (for photographic camps/lodges)
- Drawings of buildings (for photographic camps/lodges)
- Physical and technical plan
- Development Plan

##### ***Economic Environment***

- Brief outline of national, regional and local setting of project
- Company demonstrate clear understanding of government policies and business environment
- Company demonstrates clear understanding of social and development needs of the community

##### ***Natural Resource Management***

- Proposals demonstrate knowledge and understanding of current wildlife status
- The intentions of the tenderer towards managing the wildlife populations during the joint venture
- How wildlife will be protected from illegal use
- Proposed methods to monitor wildlife population trends and impact of safari hunting

- Demonstrate who the rights of local communities to harvest natural resources will be accommodated under the project to avoid conflict with any commercial activities.

### ***Environmental management***

- Development schedule
- Management of construction activities and materials
- Waste management
- Energy management
- Vegetation management
- Vehicle management
- Environmental awareness and interpretation program

### ***Staffing***

- Organizational structure
- Description of staffing posts
- Intended staff training program
- Staff accommodation and other staff welfare matters
- Stipulate the number of local employment opportunities
- Indicate number of temporary and seasonal positions

### ***Marketing and promotion***

- Marketing and promotion strategy
- Marketing capabilities

### ***Community support and civic responsibilities***

- Policy on community involvement



- Social responsibility program
- Proposed contribution towards community development
- Proposed civic responsibilities
- Proposed contribution towards economic and educational development

### ***Financial Analysis***

This section must not be confused with the Financial Offer for the land, hunting quota fee or any other fixed and/or variable costs that the tenderer intends to offer. These are to be given the Financial Offer.

What is required here is a Cash Flow Analysis of the proposed infrastructure development, including costing at market prices of the physical and technical plan. Sources of finance should be included. Staff requirements should be listed and posted.

The derivation of details on projected income should be clearly explained, with details of anticipated tourist numbers and tourist occupancy levels, marketing strategies for hunting operations *etc.*

## **5.2.4 Suggested Structure of Financial Proposal**

### ***Company profile***

- Past experience of company
- Past experience of principal staff
- Past performance of company with similar developments

### ***Financial plans and projections***

- Financial base
- Projected capital investment
- Projected sales
- Sales and revenue forecast

- Profit and loss forecast
- Proposed opening balance sheet

### ***Payments to AA***

With regard to a Hunting Concession, the AA can set a reserve price for the WMA using the existing “Block Fee” of US\$7 500. Similarly it can set reserve prices for each species offered on quota using the current WD price list as a guide. Potential bidders can then indicate<sup>11</sup>:

- Block Fee, including proposed annual increments which will be payable to the AA annually
- Game Fee for each animal shot or wounded, including proposed annual increments which will be payable to the AA annually
- Observer Fee, charged on a daily basis for any observer staying in the hunting camp but not hunting
- Conservation Fee charged on a daily basis for all hunters
- Payment schedule

With regard to a Photographic Concession, the can set reserve prices for the concession site, but should structure payments on a fixed and variable cost system. The fixed cost can be based on the number of beds in the camp (*e.g.* 16-bed camp) while the variable costs are based on a bed-night levy.

This system is described in greater detail in the appendix.

### **5.2.5 Tender Assessment Process**

The Tender Assessment Process would involve the evaluation of the Technical Proposals first. These would be scored with the top three (or four, depending on the number of bids received) going onto the second part of the selection process, namely, the evaluation of the Financial Proposal. The highest scoring Financial Proposal would then presumably be selected as the winning tender.

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<sup>11</sup> Note: This approach follows the current system employed by the WD. Thought should be given to streamlining this procedure into a concession fee and a trophy fee similar to the method used in Zimbabwe.

The two-envelop system is recommended here since it conforms to methods that are regularly used in Tanzania. This system is also useful when dealing with a large number of applicants. However, consideration should be given to using a *three-envelop* system in which the company details are only disclosed after the financial proposals have been opened. In this way, the evaluation committee is protected from being influenced by the “big players” in the industry<sup>12</sup>.

### ***Evaluation and scoring***

The evaluation and scoring of the proposals would be conducted by the Tender Evaluation Committee appointed by the AA, and would be based largely on the lines of the headings outlined above. To provide an as objective as possible evaluation of the proposals, a scoring system should be used. In reality, the ‘objective’ scoring will be based largely on individual ‘subjective’ assessments and ‘gut feel’ of the evaluators in the Tender Evaluation Committee. With practice and more experience, however, the Committee should find the evaluation and scoring of proposals easier with time.

The following scoring system is suggested:

| <b>Evaluation Criteria</b>       | <b>Score</b> |  |
|----------------------------------|--------------|--|
| <b>Technical Proposal</b>        | Out of 100   | <b>Minimum Score Deemed Responsive</b> |
| • Project Concept                | 20           | 10                                     |
| • Natural Resource Management    | 20           | 10                                     |
| • Staff Planning                 | 30           | 15                                     |
| • Community Support              | 30           | 20                                     |
| <b>Financial Proposal</b>        | Out of 100   | <b>Minimum Score Deemed Responsive</b> |
| • Financial Plan and Projections | 40           | 25                                     |
| • Payments to AA                 | 60           | 40                                     |

Individual members of the Tender Evaluation Committee would assess each proposal independently. Scores for each category would then be added together and an average taken. The average score, which presumably reflects the overall assessment of the Committee, is what is used to deem the responsiveness to the tender of each proposal. It is likely that some Committee members will score consistently higher or lower than the average, some of them considerably so. This will most probably reflect unfamiliarity or lack of experience with the category being evaluated. It will be up to the Committee to decide what to do about outlying or anomalous

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<sup>12</sup> This system has been used very effectively in Botswana

scoring. In time, it will be found that Committee members will become more adept at evaluating and scoring and consistency in scoring will start to become much more apparent. It is important, however, to retain as much as possible the same individuals in Committee<sup>13</sup>.

Should none of the proposals reach the required minimum scores, the Tender Evaluation Committee will need to make a decision whether to accept the ‘best’ bid or to launch an entirely new tender.

### **5.3 Draft “Joint Venture” Contracts**

The trend in most African countries where CBNRM initiatives are being promoted is for the community to engage the services of private sector entrepreneurs to develop tourism facilities or opportunities. This strategy is employed mostly because the community does not have access to the necessary funds or expertise to develop, maintain and run tourism operations. It must be made clear that this is not a process of “privatization” since the community still retains ownership and ultimate authority of the concession area. Rather it should be considered as a strategy that is best suited to exploit and run the tourism opportunity to the mutual benefit of both parties.

#### **5.3.1 Need for Standardised “Joint Venture” Agreements**

Experience from within the region has shown that without some form of formal agreement, difficulties such as commencement dates, levels of fees, under-selling, payment schedules, lack of annual incremental increases, apparent loss of control over the concessionaire, site delineation, *etc.*, were all shown to be common problems. At the same time, these agreements must not be structured in a way that local communities may find difficult to understand, but at the same time be “legally strong” enough to promote the development of tourism operations without discouraging the developers.

Furthermore, it is important that a standardized format for the agreement be adopted in as far as this is possible. This will avoid confusion from within the industry and will assist the implementers to enforce these agreements. The term ‘standard’ implies that it can be applied across the board with little modification and with equal success to both hunting and photographic concessions. It is recognized that no two tourism operations or concessions are the same and that each will require different agreements, even if only marginally so. However, where an AA is in the position to offer more than one agreement, it is important that the same format, terms and conditions, obligations *etc.* are applied equally to all agreements. If this is not done, there is the

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<sup>13</sup> Given the inexperience of the future AAs in this process, it is strongly suggested that some form of Technical Assistance be provided here to facilitate this process.

real possibility of conflicts arising between the AA and the various operators. Furthermore the AA may find it difficult to keep track of the various permutations and combinations of the different agreements. Having a consistent structure and content will also help considerably when it comes to negotiating with potential concessionaires and managing those concessions when they are signed and secured.

### **5.3.2 General Structure of a “Joint Venture” Agreement**

The general structure of the “Joint Venture Agreement” proposed here is designed to incorporate both safari hunting and photographic tourism activities that will permit a wide range of recreational activities to be undertaken within the limits set by the AA. We provide three examples of agreements in the appendix.

In essence the agreement incorporates five key sections:

- a. The purpose of the agreement.
- b. The responsibilities of both parties.
- c. The financial arrangements.
- d. Conditions under which the agreement may be terminated.
- e. General terms and conditions that protect the interests of both parties and the biophysical features of the WMA.

These agreements deliberately avoid terms and conditions that deal with day-to-day operational activities of the concessionaire. These issues are better managed and controlled through a separate agreement (or “permit” system) than can be renewed annually rather than through a lease agreement. This is because the conditions under which both parties will operate during the tenure of the agreement may change from one year to the next. By excluding these from the lease agreement, both parties will have the flexibility of being in a position to change the conditions under which the project functions without the legal complications associated with amending lease agreements.

The key issues addressed in the agreement are:

- The purpose of the agreement is clearly defined.
- The responsibilities of both parties to the agreement are clearly laid out.
- The agreement absolves the AA from all financial risk.

- The AA will be fully integrated into the day-to-day operation of the project through Joint Management Meetings (see below).
- The payment schedule to the AA is clearly laid out.
- The “spirit” of the agreement ensures that the AA is always in control of the concession but at the same time protects the interests of both parties.
- There are clear remedies to correct any breach of the agreement.
- The terms and conditions under which the agreement can be terminated are clearly defined.

In general, all the main sections contain standard or frequently used contract clauses. The great majority of these will be common to all tourism concessions that are entered into. However, it is very likely that a number of clauses will be amended to suit specific cases. For example, the following specific clauses may be incorporated into the agreement depending on the terms and conditions of the original tender proposal.

- Whether the agreement is signed in the name of a company or an individual
- Whether the lessee will be permitted to sublet or sell the lease agreement
- Incorporation of the development program time schedule
- Community rights

No attempt will be made here to describe or discuss any of the clauses, as all of them are self-explanatory. However, the reader is strongly urged to become familiar with the example given in the appendices. There is a need, however, to highlight some general aspects of the agreements.

These include the following:

### **5.3.3 Lessor’s and lessee’s signatory body**

There is a legal requirement to include the position of the chief signatory to the agreement. This will commit the AA to honoring the agreement even though the chief signatory may no longer hold the official position. However, It is important that the name of the lessee representing the Safari Company be included in the agreement. This prevents the agreement changing hands in the event that the Safari Company is sold or sublet.

#### **5.3.4 Grant of tourism concession**

The Grant of Tourism Concession effectively details what it is that the AA, as Lessor, would be granting to the Concessionaire. In most instances, this is simply the identification of the tourism product or operation in question, with exceptions made to land, minerals, wildlife, *etc.*, occurring in, on and around the WMA.

#### **5.3.5 Payment Schedule**

The most important clause deals with the details of the payment schedule, type and amount of fees to be paid to the Lessor by the Concessionaire, when these fees are to be paid and the amount of capital investment involved.

#### **5.3.6 Rights and obligations of the Concessionaire and Lessee**

The rights and obligations of the Concessionaire and the Lessee form the bulk of the main text of the agreement. These can either be simple or very detailed depending on the concerns of the lessee and the concessionaire. It is beyond the scope of this report to go into specific rights and obligations of each party in any detail, and the reader is again referred to the appendix for working examples of the various clauses that can be used in the agreement. The clauses will clearly indicate the issues that are being addressed.

Generally, one should strive to strike a balance between the rights and obligations of the Concessionaire and the rights and obligations of the Lessor. The more flexible the agreement, the easier it will be to administer and manage. It is for this reason that it is recommended that many of the day-to-day obligations be dealt with through a permit system rather than through the lease agreement. In this regard, the role of an independent facilitator (or broker) is important.

#### **5.3.7 Remedies and termination of the Agreement**

The agreement should contain clear and concise remedies that can be taken by both parties to rectify any breaches of the agreement. Similarly both parties must be protected from unwarranted cancellations of the agreement, especially where large investments are involved. This can be dealt with through strong compensation clauses that are financially punitive in the event that one or other party cancels the agreement without reasonable cause.

#### **5.3.8 Role of the Joint Management Committee**

Under a Joint Venture Agreement it is extremely important that both parties are kept fully informed about all aspects of the project during its operation. To achieve this, “Joint Management Committees” are established that consists of key representatives of the AA, the

community and the tour operator. This committee will usually meet formally at least twice a year (preferably three times) at a date that is mutually agreed by both parties.

The main purpose of this Joint Management Committee is to keep both parties to the joint venture well informed of its progress. Any issues that may arise can be discussed in a frank and open manner and resolved before they become untenable and lead to a possible breakdown in communication.

These meetings thus provide an opportunity for the AA/tour operator to raise any issues of concern regarding the safari operations or suggest ways in which the relationship between the tour operator, the AA and the local communities can be improved.

Similarly this forum can be used to discuss mutual issues relating to the smooth operation of the agreement, and keep the AA fully informed about the progress of the project. This would include issues such as marketing success, tourism occupancy levels and indicative potential income levels and payment schedules. It also provides an opportunity to discuss any new opportunities with the AA that may arise and how the joint venture could take advantage of these.

In short, the Joint Management Committee is the forum for dialogue in which both parties can discuss the progress of the project, and monitor its success.

### **5.3.9 Functions of the Joint Management Committee**

The functions of the Committee may be summarized as follows:

- It is a forum for consultation and decision -making on all matters affecting the implementation of the agreement *e.g.* road construction, road maintenance, security issues, construction of additional fixtures, fire and management and use of natural resources, anti-poaching, provision of social services, discussion of hunting quotas *etc.*
- The committee will be responsible for monitoring the books of accounts and annual financial statements of the tour operator that relate to the Joint Venture Agreement, and ensure that all payments are made on time.
- The committee will serve as a forum for settling disputes as may arise between the parties. Where this is not possible, the dispute can be referred to an arbitrator agreed upon by both parties.
- The committee will be responsible for ensuring that all parties act lawfully so that the operations of the tour operator can be effectively and efficiently implemented.



The composition of the Committee can vary but should not exceed 5 to 8 key people who are drawn from both the community and the operator. By mutual agreement, the AA can determine who can stand on this committee and for how long a period. Rules can also be established to disqualify people from sitting on the committee (*e.g.* criminal convictions, death, mental disability *etc.*).

## 6. Draft Agreement For WMAs In Tanzania – The Way Forward

Taking all of the above issues and concerns into account, the following *provisional draft agreement* that can form the basis of negotiation between potential AAs and prospective investors is presented.

It must be stressed here that this draft agreement requires further input from all stakeholders before it can be regarded as a sound-working document. This will require that all stakeholders be given the opportunity to discuss the document and suggest mechanisms for its improvement. We suggest that the most appropriate forum to achieve this is a workshop that consists local community leaders, government institutions, NGOs and the private sector.

### MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** is made and entered into on this .....day of .....200..... between (*Name of AA*) (hereinafter referred to as the AA) of P.O. Box ..... of the one Part and .....(*Name of Person*) representing (*Name of Company or Firm intending to invest in the WMA*) (hereinafter referred to as the Investor) of P.O. Box ..... of the other Part:

**WHEREAS** the AA, acting for and on behalf of the local community members in its jurisdiction and in accordance with its Constitution, has the power to grant a concession over (*Name of the WMA/Tourist site*) located in (*Name of District/Region/Village Area*).

**AND WHEREAS** the AA and the Investor have agreed to enter into an agreement to conduct (*hunting safaris, game viewing safaris and photographic safaris – delete inapplicable*) (hereinafter referred to as “the Agreement”).

#### **NOW THIS DOCUMENT WITNESSES AS HEREUNDER:**

That the AA and the Investor (the Parties) have entered into and concluded this Agreement under the terms and conditions stipulated hereunder:

### **1. PURPOSE OF THE AGREEMENT**

The purposes for which this Agreement has been entered into are:

- To bring together the skills, knowledge, financial resources and assets of local community members and the investor with a view to develop and take advantage of the wildlife resources and related economic activities in the WMA.

- To provide technical, financial and managerial skills necessary for the success of the Venture.
- To ensure that local community members receive a fair share of the benefits from the use of the assets under their control and that the interests of the investor(s) are secured.

## **2. OBLIGATIONS OF THE PARTIES**

### **The AA hereby agrees that:**

- It shall endeavor to keep and maintain all that area comprising the WMA free from any human settlement, whether temporary or otherwise, for the entire duration of the agreement.
- It shall provide the Investor and/or his/her agent's access to the WMA at all times.
- It shall not grant any user rights to any third Party to operate a business similar to that in which the Investor is involved.
- It shall draw the Investor's attention and involve him/her in all matters that the AA may believe to be detrimental to the continued existence of the investment or the Investors activities in the WMA.
- It shall not enter into any other agreement or merge with any other organ or body without prior notice and consent of the Investor.
- It shall not develop by-laws that would override or affect the provisions of this Agreement.

### **The Investor hereby agrees:**

- To provide all the finances necessary for the success of the business investment.
- To provide all equipment and assets necessary to make the investment a success.
- That all immovable fixtures of a permanent nature, whose removal may cause damage to the environment. Shall devolve to the AA upon lapse of the agreement.
- To construct and maintain all necessary building infrastructure.
- To respect the cultures and traditions of local community members.
- To absolve the AA from any financial risk or liabilities associated with this Agreement.

- To train and employ local community members in the day-to-day activities of the venture. In particular, the Investor shall employ at least 60 percent of his/her staff from local community members.
- To plan, implement and develop projects that are for the benefit of the community.
- Supply basic social infrastructure and necessities as agreed to with the AA.
- To permit livestock grazing in the WMA as agreed to with the AA.
- Permit the local community access for the performance of cultural rites and rituals provided that these activities are not detrimental to the existing facilities and activities of the venture.
- To ensure that all waste is disposed of in a manner that will not affect the environment and/or health of the local community and/or their livestock.
- Not to interfere or tamper with, or apply political, financial or economic mechanisms, or in any other manner whatsoever, with a view to influence the administration and the day-to-day activities of the AA in his/her favor.
- Not to use the land provided for the venture for any purpose save for that which has been approved in terms of this Agreement without prior written consent of the AA.
- Not to sublease, sublet or transfer, in any manner whatsoever, the Agreement, or any part thereof, without the written consent of the AA obtained in a general meeting of the AA duly convened for the purpose of considering the consent.
- That all property, movable and immovable, used in the facility would be the property of the investor and that the investor shall not borrow, rent or lease any immovable property for the purposes of using such facility without the written consent of the AA.

### **3. MANAGEMENT OF NATURAL RESOURCES**

#### **The Investor undertakes:**

- To take all necessary measures to prevent soil erosion and other damage to the ecosystem within the WMA in accordance with the law.
- Not to remove, sell, damage or otherwise dispose of any sand, gravel, earth, stone or timber in accordance with the law.

- Not to destroy any trees without the written consent of the AA.

#### **4. ASSIGNMENT**

**The Investor hereby** undertakes not to sublease, assign or part with possession of the concession or facility or part thereof, that has been granted for purposes of investment by the AA under this Agreement.

#### **5. PERFORMANCE BOND**

**The Investor shall** deposit a Performance Bond of US\$ ..... (*based on a percentage of the overall investment*) to an account jointly owned by the Investor and AA, as security for undertaking the development of the Venture. This amount plus the interest accrued thereon shall be liable to forfeiture by the AA where the Investor either absconds or abandons the project/investment or to enforce a judgment against the Investor where the Investor is in default of payment.

The Performance Bond and interest accrued thereon shall otherwise revert back to the investor upon the lapse of the Agreement.

#### **6. FEES FOR THE RIGHT TO OPERATE**

**That the fees** for the right to operate safaris shall be calculated at the rate of:

*INSERT AGREED FEE STRUCTURE*

#### **7. INDEMNITY**

**The Investor shall** indemnify the AA for all sums, which the AA shall become legally liable in respect of any claims resulting from injury or death of any person occasioned by accidents caused by the use of the WMA.

#### **8. REMEDIES, INTERPRETATION AND APPLICABLE LAW**

**Any breach of this Agreement** shall entitle the aggrieved Party to seek remedies in accordance with established laws, rules, regulations and principles governing the contracts pertaining in the United Republic of Tanzania. Any matters or questions arising in relation to the interpretation of the words or any word or phrase appearing herein relating to this Agreement shall be interpreted in accordance with any definition or use thereof in accordance with the relevant applicable laws of the United republic of Tanzania.

## **9. DISPUTE SETTLEMENT**

**Any dispute or misunderstanding** that may arise from or that which is connected or incidental to the execution of this Agreement shall be settled amicably at regular meetings called by both Parties. The Parties further agree that any dispute or misunderstanding shall be referred to an Arbitrator in accordance with the relevant law. Before any matter is channeled to an Arbitrator, the Parties shall have exhausted all alternative avenues of settling the dispute.

## **10. ACCESS TO RECORDS**

**The Investor shall** maintain and keep records and books of accounts and make these available upon request for inspection by the AA. The Investor shall submit such books and records to the satisfaction of the AA. Non-compliance with this requirement shall be considered a breach of the Agreement and shall entitle the AA to revoke this Agreement forthwith.

## **11. OPERATION AND DURATION**

**Unless otherwise stated** herein, or in any other law in force and to which this Agreement applies, this Agreement shall be deemed to have commenced on the date of signing by the appropriate and relevant persons for and on behalf of both Parties duly authorized to do so. The Agreement shall be operative for a period of .....years commencing on .....day of .....200.....

## **12. AMENDMENT**

**The Parties may** by mutual consent amend this Agreement or any part thereof should they deem that this is necessary in order to conform to changes in legislation, by-laws, regulations and/or policies, or they deem that such changes shall enhance the performance of the Agreement.

## **13. RENEWAL**

**The Parties to this Agreement** may, upon mutual understanding, renew this Agreement for a further period(s) and upon terms and conditions as they may have decided. In the event that either Party deems it fit to renew the Agreement, either Party shall give twelve calendar (12) months notice of such intention.

## **14. TERMINATION OF AGREEMENT**

**Either Party to this Agreement** shall have the right, upon giving a minimum of one (1) year's written notice to that effect, to terminate this Agreement provided, however, that such notice shall only expire upon the 31st December in any one year during the currency of this Agreement.

In the event of such a termination the operator shall not be entitled to any compensation for the improvements.

## **15. COMPENSATION**

**The Parties hereby agree** that upon expiry of this Agreement and in the absence of any renewal:

- The AA may require the Investor to remove any improvement that has been affected by the Investor and restore the land to a condition acceptable to the AA within three calendar (3) months. In exercising this option, the AA shall however, give six months(6) notice to the Investor. In the event the Investor fails to remove such improvements, the AA may remove the said improvements with a view to restoring the land and recover the costs incurred in the exercise from the Performance Bond deposit.
- That all or any part of the said improvements that the Investor does not demand shall not be removed, shall revert to the AA and no compensation shall be due or payable in any way whatsoever to the Investor in respect of the said improvements.

## **16. NOTICE**

**Any notice** or correspondence addressed or served upon either Party shall be deemed to have been sufficiently given, served or addressed as the case may be, if sent by registered mail addressed to:

The Investor if sent to:

*FILL IN THE FULL NAME AND ADDRESS OF THE INVESTOR*

The AA if sent to:

*FILL IN THE FULL NAME AND ADDRESS OF THE INVESTOR*

Or such other mailing or physical address as either Party may from time to time specify in writing.

## 17. SIGNED, SEALED AND DELIVERED

With the Common Seal of

AA

.....

SEAL

(Name of AA) by .....

(Name of Authorized Officer of the AA) at

.....

(Name of place/town)

this .....day of .....200.....

Name:.....(Authorized Officer)

Position in AA:.....

Signature:.....

## 18. SIGNED, SEALED AND DELIVERED

INVESTOR

With the Common Seal of

SEAL

.....

(Name of Investor) by .....

(Name of Authorized Officer of the Investor) at

.....

(Name of place/town)

this .....day of .....200.....

Name:.....(Authorized Officer)

Position:.....

Signature:.....



**BEFORE ME:**

Advocate/Commissioner of Oaths

Witness: .....

Name:.....

Name:.....

Qualification:.....

Qualification:.....

Signature:.....

Signature:.....

Date:.....

# **Appendix I: Terms Of Reference**

## **Scope Of Work**

### **Procedures For Communities To Enter Into Joint Ventures In WMAs**

#### **1. EPIQ/Tanzania Task Order**

EPIQ/Tanzania is a buy-in from USAID/Tanzania into EPIQ (Environmental Policy and Institutional Strengthening Indefinite Quantity Contract), a USAID/Washington Global Bureau sponsored mechanism. International Resources Group (IRG) is the lead contractor in the EPIQ consortium. EPIQ/T supports achievement of USAID/Tanzania's Strategic Objective in E/NRM (Strategic Objective # 2, or "SO2"). EPIQ/T strives to achieve its objective through assisting the government of Tanzania (GOT) to develop an enabling environment for community-based natural resource management (CBNRM). Its main partner in this process is the Ministry of Natural Resources and Tourism, and its Wildlife Division (WD). EPIQ/Tanzania maintains an office in Dar es Salaam with full time staff, complemented by Tanzanian and expatriate consultants.

#### **2. CBC Advisory Services (GTZ)**

As part of the Tanzania – German Government Agreement on Technical Co-operation, GTZ is providing advisory and other services to the CBC section in the Wildlife Division. Realizing the advantages of working together in helping WD implement its wildlife policy, EPIQ/T and GTZ have agreed to support various programs in the WD Work plan. The study on Guidelines for Communities to enter into Joint Venture with Investors is conducted and financed as a joint tripartite activity. In this study, GTZ will support the involvement of one international consultant while EPIQ will finance the involvement of one local consultant.

#### **3. Activity Background**

Implementation of the Wildlife Policy of Tanzania (WPT) and the creation of Wildlife Management Areas (WMAs) will open the door for a number of enterprise opportunities for the local communities that now benefit little from the presence of wildlife in their areas. In order to take full advantage of the economic opportunities that arise by virtue of WMA designation, they will need to enter into contractual arrangements with hunting and photographic safari operators, hoteliers, wildlife ranchers, and providers of transport and other ancillary services. The sustainability of the ventures they enter into depends importantly on whether the legitimate expectations of both sides are properly taken into account as contracts; concessions, etc. are

prepared. Yet local residents and private sector operators have little experience in dealing with each other. Moreover, local residents may not be well versed in normal commercial practice, and in this respect find themselves at a disadvantage in terms of assuring that their legitimate interests and concerns are addressed during the negotiation process.

In a recent presentation, Miriam Zacharia of the Ministry of Natural Resources and Tourism's Wildlife Division summarized this problem by noting that "communities' entrepreneurial skills are deficient..." Deficiencies include "understanding of the types of investment, how to negotiate, how to develop and enter into contracts, marketing and commercial planning."

Additionally, there may be important policy, legal and/or institutional impediments to the conclusion of contractual arrangements that both local communities and entrepreneurs would find satisfactory.

Against this backdrop, the purposes of this study are to define and discuss the issues and to develop enabling legislation, guidelines and by-laws, or where necessary by making suitable arrangements to assure that communities have access to expert advice on a series of contractual, commercial and legal issues that will inevitably arise.

## **4. The Assignment**

A number of tasks will need to be addressed by the consultants as described below.

### **4.1 Provide recommendations on contractual, policy, legal and institutional issues**

Consultants will be required to consider and make recommendations with respect to the full range of contractual, policy, legal, and institutional issues that may be expected to arise in the WMAs as local communities embark on the process of negotiating with entrepreneurs to establish joint ventures for establishing economic activities within the WMAs. The entrepreneurs and local communities will sanction and determine the most economically attractive activities. Such recommendations may relate to changes in legislation, guidelines or by-laws.

### **4.2 Analysis of critical issues and provision of answers to the following questions**

1. What types and duration of contracts are appropriate for the most likely kinds of enterprises that local communities and entrepreneurs will wish to engage in, in areas designated as WMAs?
2. How contracts should be awarded (e.g., should consideration be given to various forms of competitive bidding, auctioning, etc)?

3. Consider the pros and cons of the existing system in awarding contracts. How does change in system of awarding contracts be consistent or affect the present Government system if it will be extended to Game Control Areas and National Parks?
4. How can security of investments from the perspective of the entrepreneurs be assured?
5. What should be the access rights (and limitations on such rights) of local residents to lands contractually set aside for specific activities by entrepreneurs. How are such rights, and limitations on rights, to be enforced? Which institution should be responsible for enforcement of such rights?
6. What are the potential areas of dispute (e.g. between WAM and the AA or between the villages and the investor etc)?
7. How can disputes be resolved (which enforcement mechanisms need to be established)?
8. What mechanisms will be put in place to ensure that communities' rights are protected? How can communities be made aware of and agree to the contracts before they are signed.
9. How can contracts be enforced?
10. Beside the Wildlife Division, suggest other institutions that will be responsible for monitoring, and also suggest monitoring parameters. Which criteria need to be considered and how can monitoring be done?
11. How can environmental performance by entrepreneurs be enforced? Suggest contractual provisions for entrepreneur to provide social services to local communities
12. Suggest contractual obligations such that entrepreneurs will be required to use local labor (state requirements, conditions of employment, employee benefits, etc.)
13. Which mechanisms can be used to ensure local community equity in investments? What can local communities contribute in the investments, how can value of their contribution be determined?
14. Suggest provisions that must be incorporated by reason of applicable law or policy.
15. Suggest mechanisms that can guarantee supply of local inputs that will be needed by entrepreneurs.

16. Consider what the policy is saying about problem animals and suggest methods for control/management of problem animals in areas contractually assigned to entrepreneurs for designated purposes.
17. Suggest ways for collaboration between WD, Village Game Scouts, Anti Poaching Unit and District Game Scouts for law enforcement in areas contractually assigned to entrepreneurs for the purpose of carrying out agreed upon activities.

The report should be written in a way that will provide **draft guidelines and draft contracts with tourism, hunting and other potential investors**. The Economic Opportunities study will provide more insights and information on existing and potential economic options that are available in the WMAs. The consultant should consult the report (or draft report) but also solicit views from key stakeholders and bring in experiences from elsewhere to strengthen the understanding of WD on these matters.

#### **4.3 Provide options for expert advice on contractual issues to local communities.**

The consultant should give suggestions on how local communities can have access to needed services. The consultants should also describe and indicate how and by what kind of organization these services could be effectively and efficiently provided. In considering this matter, the consultants should provide suggestions on the following:

1. The role of public sector agencies at all levels (local to central) in providing services of this kind
2. Whether or not there are reputable private sector organizations (including both for profit firms and NGOs) in Tanzania who can and would provide such services on terms that local communities could realistically consider.
3. Suggest criteria for picking a given NGO/private sector that provide services on contractual issues.
4. Per #2 above, if the consultant determines that private sector organizations are not available in country, he/she will advise on the question of whether they could be attracted, with or without the kinds of enticements that would have to be provided by government, donors or both.

#### **4.4 Provide draft guidelines and contracts**

The consultants shall provide draft guidelines on how communities can enter into joint venture with potential investors. The guidelines must be complete with procedures, description of institutional responsibilities, rights and obligations of each stakeholder as well as draft contracts.

#### **4.5 Proposed study team**

To carry out the proposed field study and analysis and presentation of the options as required in the ToR, a team of two persons is proposed. A third member of the team, a lawyer will come later to work with team in preparing templates for the proposed contracts, which will ensure benefits to all stakeholders and define roles and stakeholders for each stakeholder. The team will be as follows:

- An internationally recruited specialist in joint venture issues between communities and entrepreneurs, with at least 10 years practical experience in Africa. The consultant must also have the understanding of international treaties regarding wildlife issues and trade.
- Tanzanian specialist with experiences in financial/joint venture, capital venture, and with knowledge in problems affecting investments and joint venture issues between large and small scale/community based enterprises. The local consultant must also have the knowledge of wildlife management, natural resource management. S/he must have knowledge of current policies and laws (wildlife policy, forestry policy, mining, land, agriculture etc; and several relevant legislation. Knowledge of the institutional context for natural resource management and for Community based Conservation and wildlife conservation will be useful.
- Tanzanian lawyer with experience in contractual issues. Knowledge of current policies and laws (wildlife policy, forestry policy, mining, land, agriculture etc; and several relevant legislation) will be useful. Knowledge of the institutional context for natural resource management and for Community based Conservation and wildlife conservation will also be required.

EPIQ/Tanzania Project Technical Manager and Policy Support will support the team. The EPIQ/Tanzania and GTZ will provide logistical and administrative support to the team, including assistance with scheduling of meetings and field visits. GTZ will meet the cost of Vernon Booth. GTZ will also be responsible in ensuring that, as joint undertaking, the study is progressing as planned. EPIQ will meet the cost of George Nangale and Dr. Hamud Majamba, the lawyer.

## **5. Methodology**

The consultants should combine different methods in fulfilling the ToR. These should include, but not limited to literature review to highlight key issues and experiences in joint venture arrangements between communities and entrepreneurs, and draw lessons that can be useful in Tanzania. Consultants should also undertake consultative meetings and discussion with stakeholders. Specifically, the consultants should do the following:

- Discuss with stakeholders within and outside potential WMAs. In particular, sample of relevant government institutions, private sector, NGO and CBOs must be consulted.
- Discuss with a determined sample of local communities with realistic prospects of WMA designation, the types of service they require for the success of joint venture.
- Discuss with entrepreneurs (especially a sampling of those experienced in the areas of trophy hunting, photo safaris and provision of accommodations for tourists) their concerns about investments in areas that may be designated as WMAs, especially with respect to reaching accords with communities.
- Determine the availability and assess the quality of services to which local communities may avail themselves for assistance with the type of potential problems and questions already enumerated. The consultants will determine the capacity and interest of private sector enterprises, government agencies and NGOs to provide services of the kinds needed, and will render a realistic assessment of the likelihood that needed services could be so provided on terms acceptable to local communities, and if so whether or not (and what kind of) enticements would be required.

## **6. Level Of Effort And Deliverables**

Three consultants will conduct this study. One international consultants who will also be the team leader and responsible for ensuring quality results. The second consultant will be Tanzanian. The consultant should be familiar with problems that typically arise in fashioning mutually beneficial joint ventures, especially involving local communities and private, for profit organizations. The third consultant is a lawyer who will work with the team to prepare contracts. Detailed LOE below describes the tasks and timeframe.

## 6.1 Detailed LOE

| CONSULTANT                  | TASK   | DAYS    |
|-----------------------------|--|---------|
| Vernon Booth                | <ul style="list-style-type: none"> <li>- Team leader responsible for the study team organization and for timely completion and quality of deliverables</li> <li>- Focus on analysis of all the issues as described under section 4 above namely; provide recommendations on contractual, policy and institutional issues that might arise as communities enter into joint venture with entrepreneurs; carry out analysis of critical issues and provide answers to questions in subsection 4.2. The consultant shall also have provide options for expert advice on contractual issues to local communities, provide draft guidelines and template contracts.</li> </ul> | 21 days |
| George Nangale              | <ul style="list-style-type: none"> <li>- Work closely with the team leader in fulfilling all the tasks as detailed under section 4</li> <li>- Facilitate consultation and field visits (if any) in-country</li> <li>- Analyze the extent to which present wildlife policy, land policy, taxation policy, and legal framework (taxation, land, etc) provide conducive environment for communities to enter into joint venture with entrepreneurs in the manner that would ensure benefits to all stakeholders</li> <li>- Develop with the team leader guidelines on how communities can enter into joint venture</li> </ul>   | 20 days |
| Dr. H. Majamba (the lawyer) | <ul style="list-style-type: none"> <li>- Work with the team to prepare template contracts between entrepreneurs and local communities that would be legally binding, ensure benefits, define rights and responsibilities to all stakeholders.</li> </ul>   | 10 days |

## 6.2 Deliverables

- Initial draft report containing issues raised under 4 as well as proposed guidelines, and contracts to be submitted to EPIQ/T, Wildlife Division and GTZ – 3 copies to each institution plus a diskette with the report and any annexes in Word format.
- A presentation of reports findings to key stakeholders and policy makers in a meeting to be scheduled by WD in consultation with EPIQ/Tanzania and GTZ/T.
- Final report covering all the above issues under this SOW submitted to EPIQ/T, Wildlife Division and GTZ (5 copies each, plus a diskette with report and any annexes in Word format) within 10 working days following receipt of comments on the draft report.



### **6.3 Timing**

This assignment is to be carried out within a period of three weeks in Tanzania, ideally starting from the last week of May 2000. The actual start date will depend on the approval process. The whole study to report submission will take 21 days

## **7. Relationship To EPIQ/T and GTZ Mission**

This assignment is crucial from the perspective of contributing to the process of operationalizing the Wildlife Policy of Tanzania. The WD has developed draft guidelines for establishment of WMAs. WMAs will enable local communities be more responsible for the management of natural resources and also accrue benefits from the different economic and social development options that will be identified in this study. The completion of this work will enable WD achieve its objective of identifying and assessing the best options that communities can use in entering into joint venture with the entrepreneurs in a manner which will benefit all stakeholders and contribute to the sustainable development of Tanzania. It will also help USAID /T achieve its E/NRM Strategic Objective #2 in supporting the GOT in the management of natural resources. And GTZ in supporting the CBC activities in the Wildlife Division.

## **8. EPIQ Oversight**

The consultants will report to and work very closely with the EPIQ Project Technical Manager, Dr. Hussein Sosovele. Eva Kiwango, EPIQ Policy Support Specialist, will provide additional assistance. For financial issues, the GTZ supported consultant will work closely with and report to Dr. Rolf Baldus of GTZ.

## **Appendix II: Institutions Visited And People Consulted**

### **Ministry of Natural Resources and Tourism, Wildlife Division**

Emmanuel L. Severre – Director of Wildlife

Miriam Zacharia – Community Based Conservation

### **EPIQ – Dar es Salaam**

Dr Hussein Sosovele

Ms Eva Kiwango

### **Selous Conservation Program (GTZ)**

Rudi Hahn – Community Based Conservation

### **African Wildlife Foundation – Arusha**

Eutropia E. Ngido – CSC Manager

Naima Abdallah – Land Use Planner

Allan Kijazi – Project Officer

J. Kahurananga – Senior Project Officer

Peter Warren – The Nature Conservancy, Tucson, Arizona, USA (Program Coordinator)

### **Tanganyika Wildlife Films and Safaris (Endarakwai Camp)**

Magor Jones – Director

Olee Koisianga – Camp Manager, Endarakwai Camp

### **Maasai Community – West Kilimanjaro**

Porsanga Koreka – Mjumbe-Bodi ya Mahusiano

Ben Melubo – Mjumbe-Bodi ya Mahusiano, Olmolog Ward

Joseph N. Lekiole – Mjumbe wa Bodi-Ward

Ndoros Ole Nasalei – Village Game Scout

Thomas Ole Kuya – Mjumbe Endarakwai

### **Tanzania Investment Centre (TIC)**

S.M. Mpaze – Senior Economist

### **Tanzania National Parks (TANAPA, Arusha)**

Ezekiel Dembe – Manager, Planning Unit

### **Sokwe Limited**

Damian Bell – General Manager

### **Serengeti Regional Conservation Project (SRCP)**

John Muya – Project Manager

### **Mradi Wa MBOMIPA, Iringa**

K.A.S. Ngomello - Project Manager

James Mutabilwa – Conservation Officer

Dorothy Bikurakule – Technical Advisor, Community Development

### **Hunters Association of Tanzania (HAT), Iringa**

George Filiakos – Chairman

John Filiakos – Resident hunter

### **Miombo Safaris Ltd**

Michael D. Mathiaekis – Director

Scott A. Coles – Director

## Appendix III: Tourism Concession And Trophy Fees

### Photographic Tourism

It is general accepted that two types of fees should be charged for the use of a photographic concession. One is known as the annual ‘rental’ or “concession fee” (or fixed fee) and the other a variable fee (a bed-night levy) that relates to the level of business conducted by the concessionaire.

The following exercise illustrated how one can objectively calculate the fixed fees and variable fees.

### Calculation of Fixed Fees

The basic unit for calculating fixed fees is the value that can be placed on each bed within a photographic camp. This ‘bed value’ is best expressed as US dollars per bed per month. Mostly the type of facility and the experience being offered by the WMA to guests determines the ‘bed value’. Those areas with well-developed tourist facilities and infrastructure and good game populations can justify higher ‘bed values’ than less developed areas with not-so-good game populations or access to a neighboring national park

In Zambia, the ‘bed value’ was estimated put at between US\$60 per bed per month for non-seasonal camps (open all year round) and US\$80 per bed per month for seasonal camps (open less than 12 months a year) for camps adjacent to a prime national park.

In the context of Tanzania, where camps are not well developed, the “bed-value” could be set at between US\$30 – US\$50 per bed per month (pppm). As the areas become more developed for tourism and game populations increase, higher ‘bed values’ can apply.

Fixed fees are calculated as follows:

$$\text{Number of Beds} \times \text{Bed Value} \times \text{Number of Operational Months} = \text{Annual Fixed Fee}$$

The examples below illustrates the magnitude of the fixed fee that can be charged for an all-year-round photographic safari camp.

| No. of beds in camp | Market     | Estimated 'bed value' \$ per bed per month | Annual Fixed Fee (US\$) |
|---------------------|------------|--|-------------------------|
| 8                   | Up-Market  | \$50                                       | \$4,800                 |
| 12                  | Up-Market  | \$50                                       | \$7,200                 |
| 24                  | Up-Market  | \$50                                       | \$4,400                 |
| 8                   | Mid-Market | \$40                                       | \$3,840                 |
| 12                  | Mid-Market | \$40                                       | \$5,760                 |
| 24                  | Mid-Market | \$40                                       | \$11,520                |
| 8                   | Low-Market | \$30                                       | \$2,880                 |
| 12                  | Low-Market | \$30                                       | \$4,320                 |
| 24                  | Low-Market | \$30                                       | \$8,640                 |

The above figures should be used as guidelines during negotiations with concessionaires. In reality, the exact fixed fee that is charged concessionaires can differ, especially where discounts on fixed fees are used as useful bargaining chips during negotiations, e.g. discounts on fixed fees during the first years of operation, discounts on fixed fees offered for multiple camp operations.

The Fixed Fee is payment to the AA for the granting of the right for a concessionaire to conduct business in the WMA. This fee must be paid whether or not the company is operational and irrespective of any startup period. However, to protect the business in its early years, the AA could negotiate an annual percentage increment to the Fixed Fee. For example, Year 1 = Bid Amount, Year 2 = Bid Amount \* 1.5 percent, Year 3 = Bid Amount \* 2.5 percent, Year 4 = Bid Amount\*3 percent *etc.*

This annual incremental increase helps to take into consideration the effects of inflation and the increase in value of the operation to the AA.

## Calculation of Variable Fees

The variable fee that applies to tourism concessions is often referred to as the 'bed-night levy'. The basic unit for calculating bed-night levies is effectively that portion of the total amount paid by a guest to an operator for the privilege of using that concessionaire's facilities located within a WMA. The 'bed-night levy' is therefore the payment by the guest, via the concessionaire, to the AA for the use of the area.

For well-developed areas with good game populations, wild unspoiled areas, and little or no people, this levy could be as high as 10 percent. In other words, of the total amount paid by a guest to stay in the concessionaires' facility, 10 percent accrues directly to the AA.

Bed-night levies are worked out in the following way, using the 10 percent ‘bed-night levy’ as an example. The example used below is for a 12-bed up market camp operating all year round.

### **STEP 1**

There is a need to calculate the maximum number of bed-nights that the operation can sell, i.e. when the operation is running 100 percent full every night of the year.

For the example being used,

Total bed-nights = 12 beds x 365 days = 4,320 bed nights

### **STEP 2**

There is then a need to calculate an appropriate standard average annual occupancy rate.

A 35 percent average occupancy rate is considered to be a minimum that an operation can run on if it is to be a commercially viable operation. Occupancy rates below 35 percent should be considered as being unsatisfactory. ‘Good’ operations can run at occupancy rates exceeding 50 percent, with some of the better ones running at over 70 percent.

An occupancy rate of 35 percent can be very usefully used by the AA for budgeting purposes, especially if a bed-night levy based on a 35 percent occupancy rate is considered the minimum variable fee payment expected from a concessionaire on an annual basis. This minimum payment can form part of the agreement that is entered into between the AA and the concessionaire.

Taking an average annual occupancy rate of 35 percent,

Total bed-nights sold = 12 beds x 365 days x 0.35 = 1,533 bed nights

### **STEP 3**

There is then a need to estimate the accommodation fee that a concessionaire would charge a guest per day for staying at the 12-bed up market camp. For the sake of this example, it is set at US\$100 per person per day (obviously it could be higher or lower).

Daily rate for 12-bed up market camp = US\$100 per person per day

### **STEP 4**

An estimate of total annual income for the concessionaire operating the 12-bed up market camp at 35 percent average annual occupancy rate, must then be made.

This is calculated as follows,

1,533 (35 percent of bed nights sold) x \$100 (accommodation fee) = \$153,300 (total annual income)

### STEP 5

The concept of a 10 percent 'bed-night levy' must then be applied to the total annual income.

This is calculated as follows,

*10 percent ('bed-night levy') x \$153,300 (total annual income) = \$15 330*

### STEP 6

An adjustment must be made to allow for the fixed fee component of the overall concession fee.

The 'concession fee' includes a fixed fee component. In calculating the bed-night levy, therefore, it is necessary to take away the fixed fee from the figure calculated in Step 5 (\$15 330).

\$15 330 – \$7,200 (fixed fee) = \$8 130

### STEP 7

The bed-night levy can then be calculated. The figure obtained in Step 6 must then be divided by the number of bed-nights sold at an average annual occupancy rate of 35 percent.

It follows that

$$\begin{array}{rcl} \$8\ 130 & = & \$5.30 \text{ (bed-night levy)} \\ \hline & & 1,533 \text{ (bed nights)} \end{array}$$

Because both the 'bed value' and the accommodation fee vary according to the type of camp and the tourist market it is catering for, bed-night levies will differ with differing types of camps. The following table calculates the bed-night levies, in the same way as just described, for up-market, middle-market and low-market camps of eight, twelve and twenty-four bed camps.

| No beds | Market      | Annual Fixed Fee | Total Annual Bed Nights | Bed Nights @ 35 percent occupancy | Daily Charge | Total Income | 10 percent of Income (bed levy | Bed levy minus fixed fee | Bed Night levy |
|---------|-------------|------------------|-------------------------|-----------------------------------|--------------|--------------|--------------------------------|--------------------------|----------------|
| 8       | Up market   | \$4,800          | 2,920                   | 1022                              | 100          | \$102,200    | \$10,220                       | \$5,420                  | \$5.30         |
| 12      |             | \$7,200          | 4,380                   | 1533                              | 100          | \$153,300    | \$15,330                       | \$8,130                  |                |
| 24      |             | \$14,400         | 8,760                   | 3066                              | 100          | \$306,600    | \$30,660                       | \$16,260                 |                |
|         |             |                  |                         |                                   |              |              |                                |                          |                |
| 8       | Mid- Market | \$3,840          | 2,920                   | 1022                              | 70           | \$71,540     | \$7,154                        | \$3,314                  | \$3.25         |
| 12      |             | \$5,760          | 4,380                   | 1533                              | 70           | \$107,310    | \$10,731                       | \$4,971                  |                |
| 24      |             | \$11,520         | 8,760                   | 3066                              | 70           | \$214,620    | \$21,462                       | \$9,942                  |                |
|         |             |                  |                         |                                   |              |              |                                |                          |                |
| 8       | Low Market  | \$2,880          | 2,920                   | 1022                              | 40           | \$40,880     | \$4,880                        | \$1,208                  | \$1.00         |
| 12      |             | \$4,320          | 4,380                   | 1533                              | 40           | \$61,320     | \$6,132                        | \$1,812                  |                |
| 24      |             | \$8,640          | 8,760                   | 3066                              | 40           | \$122,640    | \$12,264                       | \$3,624                  |                |

For simplicity-sake, the bed-night levies worked out above should be rounded off to the nearest dollar *i.e.* \$5, \$3 and \$1 per person per night.

The AA, in conjunction with the concessionaire, can decide whether to apply different bed-night levies to the different activities (*e.g.* camping) or to apply an overall bed-night levy for the entire camp. This can be discussed and resolved during negotiations. As a general rule, the bed-night levy should not be more than 10 percent of the amount charged by the operator to the guest.



## Safari Hunting Concession

Determining the fee structure for a hunting concession is relatively simple when compared to the photographic operations. Generally, hunting concession agreements seek to establish a “Right – to – Hunt” Fee that equates to the Fixed Fee as described above. There are a number of ways to determine the base value of this fee. One method is to use a percentage of the total value of the quota. In Zimbabwe this is set at 20 percent and increases as the trophy fees are increased (usually every two years).

For example, if the total value of the trophy fees is US\$ 250,000, then the *Right to Hunt Fee* will be set at US\$ 50,000.

With regards to the trophy fee (or Game License), the trend is to set the fee at a level approximately 20 percent below the market value or at the current government fee. The AA would then use this to set a reserved price. The bidder is then asked to indicate the fee that he is prepared to pay for each species on the quota and their proposed increments on an annual basis. The following table illustrates this point.

| Species    | Quota | Reserve Price | Bid Price Year 1 | Bid Price Year 2 | Bid Price Year 3 |
|------------|-------|---------------|------------------|------------------|------------------|
| Buffalo    | 25    | \$1,000       | \$1,250          | \$1,300          | \$1,400          |
| Lion       | 4     | \$2,500       | \$2,750          | \$2,900          | \$3,000          |
| Elephant   | 3     | \$10,000      | \$10,200         | \$10,400         | \$10,500         |
| Leopard    | 4     | \$2,000       | \$2,100          | \$2,250          | \$2,300          |
| Wildebeest | 10    | \$500         | \$500            | \$550            | \$575            |
| Hartebeest | 12    | \$350         | \$350            | \$350            | \$400            |

The values included here only serve to illustrate the concept. In reality the prices offered will depend on the quality of the trophies on offer, the size of the quota and the reputation of the WMA as a hunting area.

## **Appendix IV: Examples Of “Joint Venture” Agreements**

### **A – An example of a Safari Hunting Agreement**

**MEMORANDUM OF AGREEMENT** made and entered into by and between

THE GURUVE RURAL DISTRICT COUNCIL  
P. O. BOX 110  
GURUVE

(hereinafter referred to as “the Council”) of the one part; and

Name of Company

A company incorporated and registered with limited liability hereinafter referred to as “the operator” of the other part.

WHEREAS the Council has, in terms of the National Parks and Wild Life (Appropriate Authority for Communal Lands) S.I. 12 of 1991 power to grant hunting rights over or in the Guruve North Concession and, through a separate agreement with the Department of National Parks and Wild Life Management, the right to conduct hunting safaris in the Dande Safari Area in the Guruve Rural District Council Area (hereinafter referred to as “the concession”) and depicted on the attached map;

AND WHEREAS the Council and the operator agree to enter into an agreement to operate hunting safaris, game viewing safaris and photographic safaris (hereinafter referred to as “the Agreement”).

NOW THEREFORE THESE PRESENT WITNESS:-

That the parties hereto have entered into and concluded the following Agreement, that is to say -

#### **CONTRIBUTIONS TO THE AGREEMENT BY THE PARTIES**

1. (a) THAT the Council will contribute the following to the Agreement:

- (i) Agrees to maintain wildlife management areas free from human settlement for the duration of this agreement.
- (ii) Agrees to provide a guaranteed minimum annual quota for the duration of this Agreement.

(iii) Agrees to secure the Dande Safari Area as part of the concession for the duration of this Agreement.

(iv) Agrees to provide the operator with a site on the Zambezi river to establish a fishing and photographic camp of up to twenty (20) beds.

(v) Call Joint Management meetings no later than March, August and December each year.

(b) THAT the operator will contribute the following to the Agreement:

(i) Provide all the finance necessary for the success of the hunting, game viewing and photographic operations.

(ii) Provide all movable equipment and assets necessary to make a success of this agreement on the understanding that all such moveable equipment and assets shall remain the property of the operator.

(iii) Agrees to market all hunting, photographic and game viewing safaris.

(iv) Agrees to establish a mobile Problem Animal Control and Anti-Poaching Unit consisting of a Learner Professional Hunter equipped with a 4-wheel drive vehicle, mobile radios and camping equipment. The location of the base, co-ordination and period of operation of this unit will be mutually agreed by both parties.

(v) Be responsible for all administration and management of the safari operations.

(vi) Be responsible for construction and maintenance of an eight-bed Fishing and Photographic Camp on the banks of the Zambezi river, and expand this camp to a maximum of twenty (20) beds at a time mutually agreed by both parties.

(vii) Plan and implement projects that are approved by Council that will enhance the development of the area (for example: water points, roads, fire breaks).

(viii) Maintain the two airstrips that service the concession.

In execution of the above the operator absolves the Council from any financial risks or liabilities associated with this Agreement.

## **INTERPRETATION**

2. (a) THAT any matters or question arising in relation to the interpretation of any word or words herein appearing relating to the Rural District Council, wildlife or the utilization of wildlife shall be interpreted in accordance with any definition or use thereof in the Rural District Councils Act [No 8 of 1988], Parks and Wild Life Act, 1975, and the Development of Tourism Act, 1975, or any regulations framed hereunder, as amended and substituted from time to time (hereinafter referred to as “the said Acts and Regulations”).

(b) “Annual quota” shall mean the number and species of animals which the Council may allocate annually to the operator to hunt in the Guruve North concession (in terms of Clause 11 hereof) as agreed to at the Management Meeting.

(c) That the Council shall not be responsible for the number and species of animals which the Department of National Parks may allocated for the Dande Safari Area.

### **PROVIDED THAT**

The final quota agreed to shall not be less than the guaranteed minimum quota outlined in 11 (c).

## **RIGHTS TO CONDUCT SAFARIS**

3. THAT, subject to the provisions of this Agreement, the Council hereby gives and grants to the operator the right to conduct hunting safaris, game-viewing and photographic safaris, and in pursuance thereof to hunt wild animals within the Guruve Rural District Council Area and thereafter to process, sell or otherwise dispose of the products of such animals:

### **PROVIDED THAT**

(a) no person(s) employed by the operator shall hunt dangerous animals on the land unless such person(s) is accompanied by a person(s) who is the holder of a valid Zimbabwe Professional Hunter’s license as provided for in the said Acts and Regulations;

(b) no animal shall be hunted save in compliance with the terms and conditions of a permit issued in terms of the said Acts and Regulations.

## **KNOWLEDGE OF BOUNDARIES**

4. THAT it shall be incumbent upon the operator to know the boundaries of the Guruve Rural District Council Area.

## **PERIOD OF AGREEMENT**

5. (a) THAT, notwithstanding the date of signature hereof, this Agreement shall be deemed to have commenced on the 1st of January, 1998 and shall continue and endure thereafter for a period of five (5) years, unless sooner terminated as hereinafter stipulated.

(b) THAT all improvements in terms of clause 14(a) and 14(b) shall be completed within 18 months from commencement of this Agreement, but no later than 31<sup>st</sup> June 1999.

## **RENEWAL**

6. The Council may at its sole discretion, renew this Agreement for a further period upon such terms and conditions as they may determine upon the operator giving not less than six (6) month's notice in writing prior to the expiration of this Agreement of his desire to renew.

## **FEES FOR THE RIGHT TO OPERATE**

7. THAT, the fees for the right to operate safaris on the Guruve Rural District Council Area shall be calculated at the rate of:

- (a) Forty percent (45 percent) of gross revenue generated from all hunting operations in the area (*i.e.* daily rate, non-hunting clients, trophy fees, dipping and packing);
- (b) Fifteen percent (20 percent) of gross revenue generated from all the photographic operations in the area (*i.e.* accommodation, food and drink, game-viewing activities):

and payable to the Council as follows: -

With regard to the safari hunting operations:-

- (i) first payment comprising 80 percent (eighty percent) of the agreed expected seasonal revenues to be paid no later than 1<sup>st</sup> May:
- (ii) second payment comprising 30 percent (thirty percent) of the remaining balance of agreed expected seasonal revenues to be paid no later than August:
- (iii) final payment at end of season management meeting, but no later than December:

(c) In the event that Swainson's Safaris are unsuccessful in marketing the hunting quota, a guaranteed annual minimum of Z\$2 900 000 (two million nine hundred thousand dollars) will be paid to the Council for the first two (2) years of this agreement. Thereafter, the guaranteed minimum paid to the Council will be calculated as 75 percent of the value of the Guruve North and Dande Safari Area quota at ruling Government license fee rates for foreign sport hunters.

#### **PROVIDED THAT**

Swainson's Safaris are advised of the annual quota at least one year in advance.

(d) AUDIT. The final payment for the year to Council will be accompanied by an audit certificate prepared by an independent firm of professional auditors confirming that the amounts paid over are correct. Notwithstanding the provision of clause 1 (b) (i), the expense of obtaining the audit certificate will be borne by the operator.

#### **USE OF LAND**

8. THAT the Guruve Rural District Council Area shall be used by the operator for the purpose of operating a safari camp for hunting safaris, photographic and game-viewing safari rights granted to it and its clients in terms of this Agreement and for no other purpose whatsoever save with the prior written consent of the Council.

#### **ACTS AND REGULATIONS**

9. THAT any breach of, or failure to comply with any of the provisions of any Act, Regulations or permit applicable in Zimbabwe and relevant or in any way connected with the rights and duties of the operator in terms of this Agreement shall be deemed to be a breach of this Agreement.

#### **LICENCES AND PERMITS**

10. THAT as soon as possible the operator shall make application in due form for any license or permit required in terms of the said Acts and Regulations. The Council hereby undertakes to grant, such licenses or permits under its jurisdiction as may be necessary to enable the operator to comply with its obligations in terms hereof.

#### **ANNUAL QUOTAS**

11. (a) THAT annual quotas of animals which may be taken by the operator in any twelve month period commencing on the first day of January in any year of the Agreement shall be assessed by the Council and the operator and confirmed by the Director, Department of National Parks and

Wildlife Management, and the operator shall be informed of the preliminary quota at least twelve (12) months before the commencement of the annual quota period in question and be notified of the final quota no later than 30th November.

(b) THAT the Council will provide the following guaranteed annual minimum quota for the Gurube North Concession Area for the duration of this agreement:

| <b><u>Species</u></b> | <b><u>Guaranteed by Council</u></b> |
|-----------------------|-------------------------------------|
| Baboon                | 5 (five)                            |
| Buffalo Bull          | 20 (twenty)                         |
| Buffalo Cow           | 5 (five)                            |
| Bushbuck              | 4 (four)                            |
| Bushpig               | 0 (nil)                             |
| Civet                 | 0 (nil)                             |
| Crocodile             | 3 (three)                           |
| Duiker                | 0 (nil)                             |
| Eland                 | 0 (nil)                             |
| Elephant Bull         | 3 (three)                           |
| Elephant Cow          | 0 (nil)                             |
| Genet                 | 0 (nil)                             |
| Grysbok               | 0 (nil)                             |
| Hippo                 | 0 (nil)                             |
| Impala doe            | 10 (ten)                            |
| Impala ram            | 20 (twenty)                         |
| Jackal                | 0 (nil)                             |
| Klipspringer          | 0 (nil)                             |
| Kudu                  | 3 (three)                           |
| Leopard               | 4 (four)                            |
| Lion                  | 0 (nil)                             |
| Sable                 | 2 (two)                             |
| Warthog               | 8 (eight)                           |
| Waterbuck             | 0 (nil)                             |
| Zebra                 | 0 (nil)                             |

**PROVIDED THAT**

Should any additional animals become available, they will be included in addition to the minimum quota.

(c) THAT in the event of the Council being unable to provide any of the animals listed on the guaranteed minimum quota due to drought or other natural causes, the operator shall have no claim against the Council to provide the animals from areas other than the Gurube Rural District Council Area.

## **CONTROL OF ANIMAL POPULATION**

12. THAT if the Council desires to remove any animals from the land for the purpose of population control the Council may, if it is satisfied that such action will not adversely affect the interests of the operator -

(a) offer such animals to the operator at current quota prices; or

(b) failing acceptance of such offer by the operator the Council shall carry out such control measures and all moneys accrued from the sale of such animals shall accrue to the Council.

## **ANIMAL CAPTURE AND CONTROL**

13. (a) THAT the Council shall be responsible for notifying the operator of any population control or animal capture operations or any operation involving the shooting of animals that will take place in the Guruve Rural District Council area at least six (6) months prior to such operation:

### **PROVIDED THAT**

In the case of an operation which is required to be executed urgently or other sufficient cause, it shall not be necessary to give the notice required by this clause.

(b) THAT the Council may, if it is satisfied that the operator is unable by virtue of the aforesaid operations to make full or partial use of the hunting rights in respect of any period in any year during the currency of this Agreement, make a remission of hunting fees proportionate to the extent and duration of the period the operator was deprived of partial or total loss of rights.

## **IMPROVEMENTS**

14. (a) THAT the operator may continue to occupy three (3) existing permanent camp sites in the Guruve Rural District Council and Dande Safari Area (where applicable) and erect temporary accommodation subject to such instructions as may be given by the Council from time to time.

(b) THAT “temporary accommodation” shall comprise tents and may only be occupied on a temporary basis while the operator is actually conducting a client on a safari.

(c) THAT the operator may only construct and maintain such improvements in accordance with the approval of the Council in writing and subject to such terms and conditions as stipulated by the Council.



(d) THAT the operator shall construct and develop an eight-bed tourist camp on the Zambezi river within 18 months of the commencement of this contract in accordance with the any terms and conditions stipulated by the Council.

## **COMPENSATION**

15 (a) THAT on the expiration of this Agreement:-

(i) the Council may require the operator to remove within three (3) months any improvements effected by the operator and to restore the land to a condition acceptable to the Council and if the whole or any part of such improvements are not removed within the said period the Council shall be entitled to remove the said improvements and restore the land and recover the cost of removal and restoration from the operator;

(ii) in respect of any improvements which the Council does not require to be removed in terms of sub clause 15(a) of this clause compensation shall be payable by the Council in such sum as may be agreed upon:

(iii) in the event that the parties are unable to agree upon the compensation to be paid, then the two parties shall engage a registered Valuer to determine the replacement value of the improvements.

### **PROVIDED THAT**

No compensation shall be payable in respect of any road, water, telephone or electricity installation.

(b) THAT the amount that the operator shall have claim against the Council for payment of compensation shall be determined by a Valuer of the Auctioneers, Estate Agents and Valuers Institute of Zimbabwe

### **PROVIDED THAT**

the amount of such compensation shall not exceed 30 percent (thirty percent) of the replacement value of the construction comprising the aforesaid safari camp where such replacement value shall not include any value for the land lease and situation of the construction but shall comprise only the replacement cost of all such constructions.

(c) THAT in the event that the Council prematurely abrogates the lease where the operator is not in breach of the terms of this Agreement, the operator shall be entitled to claim compensation

from the Council in an amount equal to the replacement cost of the aforesaid construction as determined by the Valuer.

### **STAFF HOUSING**

16. (a) THAT the operator shall only construct adequate junior staff accommodation and ablution facilities in accordance with plans and specifications approved by the Council and subject to such terms and conditions as stipulated by the Council.

(b) THAT the operator shall maintain all staff accommodation and ablution facilities to the satisfaction of Council.

### **HEALTH**

17. (a) THAT the operator provides a safe and adequate water supply to the satisfaction of the Council.

(b) THAT no warranty is given that the land is free from any health hazard and the Council accepts no responsibility for the prevention or encroachment of such health hazard nor for subsequent loss or damage as a result of the existence or encroachment of any health hazard upon the land.

(c) THAT the operator shall provide, maintain and keep in good order and repair toilet and lavatory accommodation and facilities deemed adequate by the relevant authorities and shall carry out all lawful instructions given by the Council in regard to sanitary arrangements and anti-malaria and anti-bilharzias precautions or other health or safety measures and ensure that water in any river, dam or watering point is not polluted or contaminated by the operator, its employees, invitees or clients.

### **FIRE CONTROL**

18. (a) THAT the operator shall take all reasonable precautions to minimize the risk of fire on the land.

(b) THAT the Council shall do all within its power to contain and put out any fire which may occur on or endanger the land.

## **NATURAL RESOURCES**

19. (a) THAT the partners to the agreement acknowledge that for the purpose of section 46 of the Natural Resources Act (Chapter 150) they are deemed to be the “occupier of the land” and subject to any order which the Natural Resources Board may issue in terms of the said Act.

(b) THAT the both parties shall -

(i) take all necessary steps to prevent soil erosion and other damage to the natural resources within the campsites as directed by the Department of Agricultural and Technical Services;

(ii) not remove, sell, damage or cause or permit to be removed, any sand, stone, gravel, earth, clay or timber from the land except with the written authority of the Council;

(iv) only fell trees growing within the land where it is proposed to erect approved buildings or campsites with the prior written consent of the Council first having been obtained;

(v) not destroy any wild beehive.

## **LIVESTOCK AND CROPS**

20. THAT the operator shall not -

(a) keep or permit to be kept on the land any livestock or domestic pets; or

(b) cultivate any crops, fruit or vegetables except with the prior written permission of the Council.

## **ROADS**

21. THAT the operator shall -

(a) not construct any roads or vehicle tracks on the Guluwe Rural District Council Area except where this has been agreed to with the consent of the Council.

(b) within one week of receiving a request from the Council close and cease to use any road, or vehicle track constructed by the operator on the land.

## PROVIDED THAT

this clause shall not apply to roads that deny the operator free access to the hunting or photographic camps.

## **CESSION: ASSIGNMENT: SUBLEASE**

22. (a) THAT the operator shall not sublet, or part with possession of the concession and/or quota nor grant any form of right of occupation in respect of the concession or any part thereof, or hypothecate or otherwise encumber the concession and/or quota or any part thereof without the prior written consent of the Council.

(b) THAT the operator shall advise Council of the number and composition of the current shareholders and directors and any subsequent changes thereof.

## **INDEMNITY**

23. THAT the operator hereby indemnifies the Council for all sums which the Council may become legally liable in respect of any claims, injury or death of any person as a result of any accident arising out of or caused by use of the concession.

## **NUISANCE**

24. (a) THAT the operator shall not do, or cause or permit to be done within the land any act, matter or thing which shall, or may be an annoyance or nuisance to the Council or the occupier of contiguous land.

(b) THAT the Council undertakes not to allow the establishment of any other safari camp or camps within a five (5) kilometer radius of the safari camp to be erected by the operator as herein before provided.

(d) THAT the operator is permitted to destroy any vermin that may enter the campsite areas.

## **TERMINATION OF AGREEMENT**

25. (a) THAT the operator shall have the right, upon giving a minimum of one (1) year's written notice to that effect, to terminate this Agreement provided, however, that such notice shall only expire upon the 31st December in any one year during the currency of this Agreement. In the event of such a termination the operator shall not be entitled to any compensation for the improvements.

(b) THAT the Council shall have the right upon giving a minimum of one (1) year's written notice to that effect, to terminate this Agreement provided, however, that such notice should only expire upon the 31st day of December in any year.

### **SAFARI OPERATION**

26. THAT the operator shall at all times carry out its safari operations and other activities in such a manner as will not prevent any resident or other duly authorized person from passing through, carrying out research upon, or over-flying the land and the operator shall further take such precautions in the carrying out of all its operations and activities as to ensure the safety of such residents and/or duly authorized persons:

#### **PROVIDED THAT**

The operator shall be informed of any authority given to any person by the Council to enter upon the land at least two weeks, or such lesser period as may be mutually agreed, before such authority becomes valid, save where such persons are passing through the area on any recognized main through road.

### **NOXIOUS WEEDS**

27. THAT both parties shall take all reasonable steps to prevent the propagation, preservation, proliferation or spread by the operator, the Council, employees, clients, agents or contractors of any noxious weeds or noxious vegetation as may be defined in the Noxious Weeds Act (Cap. 127) and the venture shall not introduce or grow any non-indigenous trees, plants or shrubs upon the land except in the immediate vicinity of dwellings house and staff quarters except with the written permission of the Council.

### **VETERINARY REQUIREMENTS**

28. THAT the operator shall at all times comply with the requirements of the Director of Veterinary Services.

### **RECORDS AND BOOKS OF ACCOUNT**

29. THAT the operator shall

- (i) maintain up-to-date records and books of account in such a way that gross earnings can be calculated for each calendar year of operation and such other records of the operations of the operator as the Council may reasonable determine. The operator shall make these records and books of account available on request, for inspection by the Council at the

Management Meeting and if such books are not made available and are not up-to-date the Council may cancel the operator's permit to hunt on the land and shall not re-issue such permit until the books are submitted to his satisfaction.

- (ii) maintain up-to-date hunting records on the appropriate CAMPFIRE Hunting Permit Form, and guest register for all clients visiting the photographic camps.

### **WAIVER**

30. THAT any extension of time for payment for other indulgences or concessions granted by the Council to the operator or the operator's failure to exercise any right conferred upon it in terms hereof on one occasion shall not be deemed to be a waiver of or shall in any way affect or prejudice any of the operator's rights under this Agreement on any other subsequent occasion.

### **CAPTIONS**

31. THAT the captions appearing at the head of the clauses of this Agreement shall not affect or be taken into account in the interpreting of the clauses to which they refer or to any other part of this Agreement.

### **REMEDIES**

32. (a) THAT if the operator

- (i) fails to pay the fee or any part thereof on due date; or
- (ii) commits, or permits any breach of the terms or conditions of this Agreement; or
- (iii) fails to comply with the terms and conditions of any permit or license issued to him in terms of the Acts and Regulations; or
- (iv) in the sole discretion of the Council fails to make adequate use of the land for the purpose set out in Clause 3 and Clause 8; or
- (v) the operators estate is sequestrated or is placed in liquidation or under judicial management; or
- (vi) the operator enters into any composition or compromise or deed of arrangement with his creditors,
- (vii) fails to construct the tourism facilities outlined in Section 14 (d) with 18 months,

(viii) fails to establish, finance and run the Problem Animal Control Unit outlined in Section 1(b)(iv),

the Council shall give the operator at least one month's notice in writing to remedy such breach or default and should the operator not remedy such breach or default within that period the Council may charge the operator interest on outstanding amounts at the ruling bank rate and/or declare the Agreement to be terminated and may take possession of the land, withdraw safari rights and eject the operator there from but without prejudice to any right which the Council shall have in terms of this Agreement.

(b) THAT, if the Council fails to provide a specified quota, then the operator may respectively seek a commensurate reduction in the fees due to Council.

(c) THAT if the Council fails to secure the hunting rights in the Dande Safari Area, then the operator may respectively seek a commensurate reduction in the fees due to Council.

### **PREVIOUS AGREEMENTS AND UNDERTAKINGS**

33. THAT this Agreement shall constitute the whole Agreement between the parties hereto and shall supersede any previous Agreement and the operator acknowledges that no representation, warranty, undertaking or promise whatsoever not embodied herein has been made or given by the Council.

### **OTHER RESPONSIBILITIES OF THE PARTIES TO THIS AGREEMENT**

34. THAT the responsibilities of the parties to the Agreement are as follows:

(a) The operator shall:

(i) Assist Council, on request, to secure and deliver animals needed for official functions, at cost.

(iii) Assist the local authority in training as mutually agreed at the Management Meetings.

### **PROVIDED THAT**

- Council provides all labor for butchering the carcasses, and

(b) The Guruve Rural District Council agree to:

(i) Provide campsites for the operator

(ii) Protect the operator from disturbances, interference or access by third parties

**NOTICES**

35. Any notice, letter, process of court, or other form of document given, addressed or served upon either party, shall be deemed to have been sufficiently given, addressed or served as the case may be, if sent registered post addressed -

(a) to the Council, if sent to the

Chief Executive Officer  
Guruve Rural District Council  
P. O. Box 110  
GURUVE

(b) to the operator at:

Swainson's Safaris (Pvt) Ltd  
P. O. Box AC 350  
Ascot  
BULAWAYO

or to such address within Zimbabwe as the Council or operator may from time to time, notify the other in writing.

THUS DONE AND SIGNED for and on behalf of GURUVE RURAL DISTRICT COUNCIL at  
GURUVE this day of                      1997.

---

CHIEF EXECUTIVE OFFICER

behalf of THE RURAL DISTRICT COUNCIL

**WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

THUS DONE AND SIGNED by the OPERATOR at  
this              day of              1997.

---



## OPERATOR

A Company duly incorporated and registered with limited liability according to the law of Zimbabwe, herein represented by in his capacity as of the Company, he being duly authorized thereto under and by virtue of a resolution at a Meeting of the Board of Directors held at

on

### **WITNESSES:**

1. \_\_\_\_\_

10. \_\_\_\_\_

## **B – Example of an Agreement to Manage a Safari Lodge**

### **OPERATIONAL AGREEMENT TO MANAGE AND OPERATE A TOURIST FACILITY**

**MEMORANDUM OF AGREEMENT** made and entered into by and between

**THE VHIMBA DEVELOPMENT TRUST**

represented by:

**THE CHAIRMAN OF THE BOARD OF TRUSTEES**

(hereinafter referred to as “the Trust”) of the one part; and

**PHOTOGRAPHIC TOUR COMPANY**

represented by:

**NAME OF OPERATOR**

A company incorporated and registered with limited liability hereinafter referred to as “the Operator”) of the other part.

WHEREAS the Trust, in terms of its Constitution, power to grant a concession over the **[NAME OF LODGE]**.

AND WHEREAS the Trust has agreed to grant the Operator the exclusive right to occupy the area known as **[NAME OF LODGE]** that is situated at the junction of the Haroni and Rusitu rivers (hereinafter referred to as the “Lodge”) as depicted on the map attached.

AND WHEREAS the Trust has agreed to grant the Operator the non-exclusive right to operate game viewing and photographic safaris in the Chiazire and Nyakwaa Botanical Reserves (hereinafter referred to as “the agreement”).

NOW THEREFORE THESE PRESENT WITNESS:-

That the parties hereto have entered into and concluded the following Agreement, that is to say -

## **PURPOSE OF THE AGREEMENT**

(a) THAT the Operator will manage and administer the tourist facility to the highest professional standards in such a way that the Trust may earn an income from tourism activities associated with the tourist facility.

THAT the Operator shall conduct game viewing and walking safaris.

THAT the Operator shall carry out trade within the Lodge and that such trade shall be restricted to the sale of foodstuffs, beverages, groceries, curios, petrol and diesel which are in demand from visitors.

THAT the Operator shall undertake training program's that develop the skills and capacity of the Vhimba community in tourism activities.

## **CONTRIBUTIONS TO THE AGREEMENT BY THE PARTIES**

2. (a) THAT the Trust will contribute the following to the agreement:

Make available all accommodation, auxiliary infrastructure, stationary plant and equipment necessary for the purpose of accommodating tourists and other persons at the tourist facility site at the Haroni and Rusitu river junction.

(ii) Facilitate access to the Chiazire and Nyakwaa Botanical Reserves.

(iii) Call Joint Management meetings no later than, February, June and October each year.

(b) THAT the Operator will contribute the following to the agreement:

(i) Provide all the operational finance, including all staff, necessary for the success of the operation.

Provide all moveable equipment and assets necessary to make the operation a success and all such moveable equipment and assets shall remain the property of the Operator.

(iii) Market all photographic, game viewing safaris and related tourism activities.

(iv) Be responsible for administration and management of the safari operations.

Be responsible for the maintenance of all buildings, fixtures, tents, furniture and fittings and stationary plant and equipment. All such assets, facilities and equipment are to be returned to the Trust in such good condition on the termination of the agreement (fair wear and tear accepted).

(vi) Insure all buildings, fixtures, tents, furniture and fittings and stationary plant and equipment forming part of the tourist facility against damage and destruction by fire and/or flood to the full insurable value thereof. The insurable value and the insurance company shall be approved by the Trust.

(vii) Maintain the grounds of the tourist facility provided that no tree or shrub of a height of 1.5 meters or above may be cut down without the approval of the Trust.

In execution of the above the Operator absolves the Trust from any financial risk or liabilities associated with this agreement.

### **INTERPRETATION**

3. THAT any matters or question arising in relation to the interpretation of any word or words herein appearing relating to the Department of National Parks and Wildlife Management, Rural District Council, Communal Land or wildlife shall be interpreted in accordance with any definition or use thereof in the Parks and Wildlife Act, as amended 1<sup>st</sup> August 1990), the Tourism Act, Rural District Council's Act and Communal Land Act or any regulations framed hereunder, as amended and substituted from time to time (hereinafter referred to as "the said Acts and Regulations").

### **RIGHTS TO CONDUCT SAFARIS**

THAT, subject to the provisions of this Agreement, the Trust hereby gives and grants to the Operator the non-exclusive right to conduct game-viewing and photographic safaris in the Chimanimani District

#### **PROVIDED THAT**

(a) no person(s) employed by the Operator shall conduct game viewing and photographic safaris on the land unless such person(s) is the holder of a valid Tour Operators License and/or Professional Guide's license as provided for in the said Acts and Regulations or such person(s) is accompanied by an appropriately licensed person;

(b) the Trust shall not allow the Operator to conduct game viewing and photographic safaris in any part of the Chimanimani National Park or any other land under its jurisdiction except that defined in accordance with this agreement.

### **KNOWLEDGE OF BOUNDARIES**

5. THAT it shall be incumbent upon the Operator to know the boundaries of the Botanical Reserves and National Park.

### **PERIOD OF AGREEMENT**

6. (a) THAT, notwithstanding the date of signature hereof, this Agreement shall be deemed to have commenced on the **1st of XXXXXX, 200X** and shall continue and endure thereafter for a period of five (5) years, unless sooner terminated as hereinafter stipulated.

(b) THAT all improvements in terms of clause 12 (a) and 12 (b) shall be completed within 12 months from commencement of this agreement.

### **RENEWAL**

7. The Trust may at its sole discretion, renew this Agreement for a further period upon such terms and conditions as they may determine upon the Operator giving not less than twelve (12) month's notice in writing prior to the expiration of this Agreement of his desire to renew.

### **MANAGEMENT FEES FOR THE RIGHT TO OPERATE**

8. THAT, the management fees for the right to operate eco-tourism activities from the Lodge shall be payable to the Trust as follows -

(a) In the first year of operation an amount equivalent to US\$XXXX and adjusted to the Consumer Price Index (CPI) and payable monthly in advance;

(b) In the second year an amount equivalent to US\$XXXX adjusted for the annual Consumer Price Index (CPI) and payable monthly in advance;

(c) In the third and subsequent years of the duration of this lease an amount equivalent to US\$XXXX and adjusted annually by the annual Consumer Price Index (CPI) and payable monthly in advance.

### **USE OF LAND**

THAT the tourist facility shall be used by the Operator for the purpose of operating photographic and game-viewing safari rights granted to him and his clients in terms of this Agreement and for no other purpose whatsoever save with the prior written consent of the Trust.

## **PROVIDED THAT**

the Trust, if it is satisfied that the Operator is unable by virtue of any unforeseen operations or events is unable to make full or partial use of the tourist facility and/or Botanical Reserves in respect of any period in any year during the currency of this Agreement, will make a remission of fees proportionate to the extent and duration of the period the Operator was deprived of partial or total loss of rights.

## **ACTS AND REGULATIONS**

10. THAT any breach of, or failure to comply with any of the provisions of any Act, Regulations or permit applicable in Zimbabwe and relevant or in any way connected with the rights and duties of the Operator in terms of this Agreement shall be deemed to be a breach of this Agreement.

## **LICENSES AND PERMITS**

11. THAT as soon as possible the Operator shall make application in due form for any license or permit required in terms of the said Acts and Regulations. The Trust hereby undertakes to facilitate the granting of such licenses or permits as may be necessary to enable the Operator to comply with its obligations in terms hereof.

## **CAMP INFRASTRUCTURE AND IMPROVEMENTS**

12. (a) THAT the Trust will construct the following improvements:

### **INSERT THE DESCRIPTION OF THE IMPROVEMENTS TO BE MADE HERE**

12. (b) THAT the Operator may only construct and maintain improvements in accordance with the approval of the Trust in writing and subject to such terms and conditions as stipulated by the Trust.

## **COMPENSATION**

13 (a) THAT on the expiration of this Agreement:-

(i) the Trust may require the Operator to remove within three (3) months any improvements effected by the Operator in terms of sub clause 12(b) and to restore the land to a condition acceptable to the Trust and if the whole or any part of such improvements are not removed within the said period the Trust shall be entitled to remove the said improvements and restore the land and recover the cost of removal and restoration from the Operator;

(ii) in respect of any improvements which the Trust does not require to be removed in terms of sub clause 12(b) of this clause compensation shall be payable by the Trust in such sum as may be agreed upon:

(iii) in the event that the parties are unable to agree upon the compensation to be paid, then the two parties shall engage a registered Valuer to determine the replacement value of the improvements.

**PROVIDED THAT**

No compensation shall be payable in respect of any road, telephone or electricity installation.

(b)THAT the amount that the Operator shall have claim against the Trust for payment of compensation shall be determined by arbitration.

**PROVIDED THAT**

the amount of such compensation shall not exceed 50 percent (fifty percent) of the replacement value of the construction comprising the aforesaid improvements where such replacement value shall not include any value for the land lease and situation of the construction but shall comprise only the replacement cost of all such constructions.

(c)THAT in the event that the Trust prematurely abrogates the management agreement where the Operator is not in breach of the terms of this Agreement, the Operator shall be entitled to claim compensation from the Trust in an amount equal to the replacement cost of the aforesaid construction as determined by the Arbitrator.

**STAFF HOUSING**

14. (a) THAT the Operator shall only construct adequate junior staff accommodation and ablution facilities in accordance with plans and specifications approved by the Chimanimani Rural District Council and subject to such terms and conditions as stipulated by the Chimanimani Rural District Council.

(b) THAT the Operator shall maintain all staff accommodation and ablution facilities to the satisfaction of Chimanimani Rural District Council.

**HEALTH**

15. (a) THAT no warranty is given that the land is free from any health hazard and the Trust accepts no responsibility for the prevention or encroachment of such health hazard nor for

subsequent loss or damage as a result of the existence or encroachment of any health hazard upon the land.

(b) THAT the Operator shall provide, maintain and keep in good order and repair toilet and lavatory accommodation and facilities deemed adequate by the relevant authorities and shall carry out all lawful instructions given by the Chimanimani Rural District Council in regard to sanitary arrangements and anti-malaria and anti-bilharzias precautions or other health or safety measures and ensure that water in any river, dam or watering point is not polluted or contaminated by the Operator, its employees, invitees or clients.

### **FIRE CONTROL**

16. (a) THAT the Operator shall take all reasonable precautions to minimize the risk of fire on the land.

### **NATURAL RESOURCES**

17. (a) THAT the operator shall -

(i) take all necessary steps to prevent soil erosion and other damage to the natural resources within the land as directed by the Trust;

(ii) not remove, sell, damage, or cause or permit to be removed, any sand, stone, gravel, earth, clay or timber from the land except with the written permission of the Trust;

(iii) preserve the land as far as possible in its natural state;

(iv) only fell trees growing within the land where it is proposed to erect approved buildings or campsites with the prior written consent of the Trust first having been obtained;

(v) not destroy any wild beehive.

### **ROADS**

18. THAT the Operator shall -

(a) not construct any roads or vehicle tracks except where this has been agreed to with consent of Trust.

(b) within one week of receiving a request from the Trust close and cease to use any road, or vehicle track constructed by the Operator.



PROVIDED THAT

this clause shall not apply to roads that deny the Operator free access to the tourist facility.

**CESSION: ASSIGNMENT: SUBLEASE**

19. (a) THAT the Operator shall not sublet, or part with possession of the tourist facility or grant any form of right of occupation in respect of the tourist facility or any part thereof, or hypothecate or otherwise encumber the tourist facility or any part thereof without the prior written consent of the Trust.

(b) THAT the Operator shall advise the Trust of the number and composition of the current shareholders and directors and any subsequent changes thereof.

**INDEMNITY**

20. THAT the Operator hereby indemnifies the Trust for all sums which the Trust may become legally liable in respect of any claims, injury or death of any person as a result of any accident arising out of or caused by use of the tourist facility or Botanical Reserves.

**NUISANCE**

21. (a) THAT the Operator shall not do, or cause or permit to be done within the land any act, matter or thing which shall, or may be an annoyance or nuisance to the Trust or the occupier of contiguous land.

(b) THAT the Operator is permitted to destroy any domestic or feral dogs, problem monkeys and baboons that may enter the tourist facility.

**TERMINATION OF AGREEMENT**

22. (a) THAT the Operator shall have the right, upon giving a minimum of one (1) year's written notice to that effect, to terminate this Agreement provided, however, that such notice shall only expire upon the 31st December in any one year during the currency of this Agreement. In the event of such termination the Operator shall not be entitled to any compensation for the improvements.

(b) THAT the Trust shall have the right upon giving a minimum of one (1) year's written notice to that effect, to terminate this Agreement provided, however, that such notice shall only expire upon the 31st day of December in any year.

## **SAFARI OPERATION**

23. THAT the Operator shall at all times carry out its safari operations and other activities in such a manner as will not prevent any other duly authorized person from passing through, carrying out research upon, or over-flying the land and the Operator shall further take such precautions in the carrying out of all its operations and activities as to ensure the safety of such duly authorized persons:

### **PROVIDED THAT**

The Operator shall be informed of any authority given to any person by the Trust to enter upon the land at least two weeks, or such lesser period as may be mutually agreed, before such authority becomes valid, save where such persons are passing through the area on any recognized main through road.

## **NOXIOUS WEEDS**

24. THAT the Operator shall take all reasonable steps to prevent the propagation, preservation, proliferation or spread by himself, his employees, clients, agents or contractors of any noxious weeds or noxious vegetation as may be defined in the Noxious Weeds Act and the Operator shall not introduce or grow any non-indigenous trees, plants or shrubs upon the land except in the immediate vicinity of his dwelling house and staff quarters provided that written permission is obtained from the Trust.

## **MAINTENANCE OF RECORDS**

25. THAT the Operator shall maintain up-to-date records in such a way that total number of bed night, number of visitors and origin can be calculated for each calendar year of operation and such other records of the operations of the Operator as the Trust may reasonable determine. The Operator shall make these records available on request, for inspection by the Trust at the Joint Management Meeting and if such records are not made available and are not up-to-date the Trust may cancel the Operator's permit to occupy the tourist facility and shall not re-issue such permit until the records are submitted to his satisfaction.

## **WAIVER**

26. THAT any extension of time for payment for other indulgences or concessions granted by the Trust to the Operator or the Operator's failure to exercise any right conferred upon it in terms hereof on one occasion shall not be deemed to be a waiver of or shall in any way affect or prejudice any of the Operator's rights under this Agreement on any other subsequent occasion.

## **CAPTIONS**

27. THAT the captions appearing at the head of the clauses of this Agreement shall not affect or be taken into account in the interpreting of the clauses to which they refer or to any other part of this Agreement.

## **REMEDIES**

28. (a) THAT if the Operator

(i) fails to pay the fee or any part thereof on due date; or

(ii) commits, or permits any breach of the terms or conditions of this Agreement; or

(iii) fails to comply with the terms and conditions of any permit or license issued to him in terms of the Acts and Regulations; or

(iv) in the sole discretion of the Trust fails to make adequate use of the land for the purpose set out in Clause 4 and Clause 9; or

(v) the Operators estate is sequestrated or is placed in liquidation or under judicial management; or

(vi) the Operator enters into any composition, or compromise, or deed of arrangement with his creditors

the Trust shall give the Operator at least one month's notice in writing to remedy such breach or default and should the Operator not remedy such breach or default within that period the Trust may declare the Agreement to be terminated and may take possession of the Lodge, withdraw safari rights and eject the Operator there from but without prejudice to any right which the Trust shall have in terms of this Agreement.

(b) THAT, if the Trust is longer permitted access to the Botanical Reserves for any reason by the Department of National Parks and Wild Life Management, then the Operator may respectively seek a commensurate reduction in the fees due to the Trust.

## **PREVIOUS AGREEMENTS AND UNDERTAKINGS**

28. THAT this Agreement shall constitute the whole Agreement between the parties hereto and shall supersede any previous Agreement and the Operator acknowledges that no representation,

warranty, undertaking or promise whatsoever not embodied herein has been made or given by the Department.

## **NOTICES**

29. Any notice, letter, process of court, or other form of document given, addressed or served upon either party, shall be deemed to have been sufficiently given, addressed or served as the case may be, if sent registered post addressed: -

(a) to the Trust, if sent to the Chairman at:

Vhimba Community Development Trust  
P.O. Box XXXXXXXX  
Chimanimani  
Zimbabwe

(b) to the Operator at

**[ADDRESS OF THE OPERATOR INSERTED HERE]**

or to such address within Zimbabwe as the Trust or Operator may from time to time, notify the other in writing.

THUS DONE AND SIGNED for and on behalf of the Trust AT CHIMANIMANI this  
day of                      200X.

---

CHAIRMAN

behalf of THE TRUST

## **WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

THUS DONE AND SIGNED by the Operator at  
this              day of              200X.

---

OPERATOR

A Company duly incorporated and registered with limited liability according to the law of Zimbabwe, herein represented by                      in his capacity as              of the Company, he being

duly authorized thereto under and by virtue of a resolution at a Meeting of the Board of Directors  
held at

on

**WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

## **C – Example of an Agreement for a Tourism Lodge within a National Park in Zambia**

*(This agreement was prepared by Philip Johnson on behalf of ZAWA).*

### **TOURISM CONCESSION AGREEMENT**

**between**

***[NAME OF DIRECTOR]***

**and**

***[NAME OF TOUR COMPANY]***

**relating to**

***[NAME OF CAMP]***

**in**

***[NAME OF NATIONAL PARK]***

---

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 1999 between *[Name of Director]*, in his capacity as Director of the Department of National Parks and Wildlife and on behalf of the Government of the Republic of Malawi (hereinafter called “the Grantor”), of the one part and *[Name of Tour Company]*, a company incorporated in Malawi and having its registered office in Lilongwe (hereinafter called “the Concessionaire”), of the other part.

### **NOW IT IS HEREBY AGREED**

In consideration of the GRANT of a TOURISM CONCESSION by the Grantor to the Concessionaire, for the Concessionaire to operate a tourism business at the Site described in Schedule 1 for the fixed and variable charges and for capital investment hereinafter appearing and for mutual promises and covenants and provisions hereinafter contained, the Grantor HEREBY AGREES to GRANT a TOURISM CONCESSION and the Concessionaire HEREBY AGREES to ACCEPT the TOURISM CONCESSION and the Concessionaire agrees to perform its obligations under this TCA.

## 1. DEFINITIONS AND INTERPRETATION

|                                |   |
|--------------------------------|---|
| <b>Agreement</b>               | the subject Tourism Concession Agreement between the Grantor and the Concessionaire.  |
| <b>Attached Plans</b>          | are the business development, operating and management plans attached to this Agreement and form an integral and enforceable part of this Agreement.  |
| <b>Bank</b>                    | shall mean the Bank of Malawi unless specifically otherwise stated.   |
| <b>Camp</b>                    | shall mean <i>[Name of Camp]</i> , a six-month twenty-four (24) tourist-bed seasonal operation and the subject of this Agreement.   |
| <b>Clients</b>                 | tourists being provided accommodation and services by the Concessionaire at the Site.   |
| <b>Commencement date</b>       | refers to the date upon which this Agreement is signed and dated.   |
| <b>Due Date</b>                | for payment of the Fixed Charges the payment due date shall be <b>1 January and 1 July</b> of each year (following the first payment upon signing of this Agreement: for payment of the Variable Charges the payment due date shall be the last business day of January, April, July and October.   |
| <b>GRZ or The Government</b>   | shall mean the Government of the Republic of Malawi.  |
| <b>Initial Term</b>            | shall mean the first concession period of 15 years.   |
| <b>Minister</b>                | means Minister responsible for Tourism.   |
| <b>Park Regulations and/or</b> | means the regulations governing <i>[Name of National Park]</i> and/or   |
| <b>Management Plan</b>         | <i>[Name of National Park]</i> Management Plan to be formulated in conjunction with, <i>inter alia</i> , stakeholders.  |
| <b>Site</b>                    | shall mean all that piece of land situate in <i>[Name of National Park]</i> including buildings and infrastructure that comprise <i>[Name of Camp]</i> , which Site is more particularly delineated and shown on a sketch hereto attached except and reserved all minerals, oils and precious stones whatsoever upon or under the said land. A Map of the Site is attached to this Agreement. |

|                                     |  |
|-------------------------------------|--|
| <b>Site Assets</b>                  | Assets which in terms of Clause 3.2.2 appear on the list of the assets hereto attached which list may be varied from time to time.   |
| <b>Personal Assets</b>              | Assets that remain the property of the Concessionaire as listed in Schedule 3 of this Agreement, which may be varied from time to time.  |
| <b>Sustainable development</b>      | development that meets the needs of the present without compromising the ability of future generations to meet their own needs (Brundtland Commission).  |
| <b>Sustainable tourism</b>          | sustainable tourism development meets the needs of present tourists and host regions while protecting and enhancing opportunity for the future. It is envisaged as leading to management of all resources in such a way that economic, social, and aesthetic needs can be fulfilled while ecological processes, biological diversity, and life support systems (World Tourism Organization). |
| <b>Sustainable tourism products</b> | sustainable tourism products are products, which are operated in harmony with the local environment, community, and cultures, so that these become the permanent beneficiaries not the victims of tourism development.   |

In all cases the masculine shall include the feminine and the singular shall include the plural and vice versa, unless specifically otherwise stated.

## **2. GRANT OF TOURISM CONCESSION**

- 2.1 In pursuance of the said Agreement and simultaneously with the signing of this Agreement, the Grantor shall grant a tourism concession and the Concessionaire shall accept the tourism concession for an initial term of fifteen (15) years on and around the Site called *[NAME OF CAMP]* situate in *[Name of National Park]* (hereinafter referred to as “the park”) in Malawi the particulars of whereof are set out in Schedule 1 hereto annexed (hereinafter referred to as “the Site”) except and reserved all game, eggs, fish, water, land, minerals, oils and precious stones whatsoever upon or under or around the said Site shown in Schedule 1 for the purpose of carrying out tourism business activities and in consideration of a fixed charge, variable payment per bed night per person and capital investment as follows:
  - 2.1.1 Fixed Charge: the parties hereby agree to a schedule of payments as shown in Schedule 2 annexed hereto and forming part of this Agreement, increasing the fixed charges by varying amounts each year as herein shown in Schedule 2 for the Initial Term.
    - a) The Concessionaire shall pay the first installment of the Fixed Charge equivalent to six (6) months upon signing this Agreement according to the Schedule 2 annexed hereto and



forming an integral part of this Agreement and the Fixed Charge shall thereafter be due on 1 January and 1 July of every year during the term granted herein

- b) The minimum annual fixed charge per tourist bed for the Lodge shall be US\$480.00, based on US\$80.00 per bed per six month season, and payment of the total fixed fees shall be *pro rata* to the available bed capacity with the minimum being sixteen (16) beds and the maximum being twenty four (24) beds

2.1.2 VARIABLE CHARGES: In addition to the fixed charge provided for in Clause 2.1 above, a variable park Visitor Fee is payable, which consists of a park entry component and a bed night component, which shall be payable monthly in arrears by the fifteenth day of the following month.

- a) The Concessionaire is responsible for paying a Park Entry fee component of US\$20.00 for every 1-day period (or partial period thereof) that each adult foreign Client (13 years of age and over) is in the park, and US\$10.00 for every 1-day period (or partial period thereof) that each child foreign Client (3 years to 12 years of age, inclusive) is in the park.

With regards Clients who are Zambian residents, the Concessionaire is responsible for paying a Park Entry fee component of US\$10.00, or Malawian Kwacha equivalent, for every 1-day period (or partial period thereof) that each adult Malawian resident Client is in the park, and US\$5.00, or Malawian Kwacha equivalent, for every 1-day period (or partial period thereof) that each child Malawian resident Client is in the park.

- b) The bednight component is equivalent to US\$10.00 per person per bednight for each adult foreign Client and US\$5.00 per person per bed night for each child foreign Client. For both adult and child Malawian resident Clients, the bed night component is equivalent to US\$5.00, or Malawian Kwacha equivalent, per person per bed night.
- c) The Bed night Charge and the Park Entry fee variable charge amounts may be adjusted following consultation with the stakeholders including the Concessionaire, provided that any adjustment must be communicated to the Concessionaire in writing at least one calendar year before the date on which the new variable charge amount is to take effect. The Grantor reserves the right, however, to adjust such variable charges from time to time having regard to dollar inflation and other economic factors within the tourism sector during the term herein granted.
- d) A minimum Variable Charge is payable, including bed night charge and park entry fee as calculated above beginning in the year 1999 when the minimum payment will be based on the actual paid occupancy. In the year 2000 the minimum variable charge will be based on 20 percent of the installed bed occupancy. In the year 2001 and all subsequent years the minimum will be based on 35 percent of installed bed capacity.

- e) For any average monthly occupancy rates exceeding 60 percent of installed capacity, a rebate of 50 percent of those variable charges paid on installed bed capacity above the average monthly occupancy rates of 60 percent will be made to the Concessionaire.
  - f) For any average monthly occupancy rates exceeding 80 percent of installed capacity, a rebate of 100 percent of those variable charges paid on installed bed capacity above the average monthly occupancy rates of 80 percent will be made to the Concessionaire.
  - g) The rebate referred to in Clauses 2.1.2(e) and (f) above will be paid within Sixty (60) days of presentation by the Concessionaire of the variable charges calculated for the month
- 2.1.3 Capital investment: the Concessionaire commits itself to a capital investment at the Site in excess of US\$500,000 during the term created herein in accordance with its Business Plan annexed hereto as Schedule 3 and constituting an integral part of this Agreement, which investment it is hereby expressly understood that the Concessionaire can reasonably expect to recover over the Initial term of the Agreement. The Concessionaire shall turn over and transfer to the Grantor at the termination of this or subsequent renewed Agreement, or at the end of this or subsequent renewed Agreement should he not wish to further renew the concession, in good and serviceable condition, all site assets invested by the Concessionaire at the Site or used by the Concessionaire for tourism activities during the term of this Agreement in accordance with paragraph 5.14 hereunder.
- 2.1.4 Other fees: the Concessionaire shall pay US\$200 per annum in respect of each vehicle registered for use in the park and US\$25 in respect of each tonne of firewood collected from a location within the park approved by the park warden.
- 2.2 The Concessionaire shall be accountable for park entry fees collected from Clients to the Grantor for each foreign and local tourist Client entering the park in such amounts as shall be set by the Grantor from time to time, except for such Clients who have separately and evidently paid the park entry fee directly to the Grantor or its servants or employees.
- 2.3 Payments are due and payable by due date without penalty with a grace period of fifteen (15) calendar days. Where payments for Fixed or Variable Charges are not made by due date, whether demanded or not, the Concessionaire will be required to pay a penalty of interest on amounts outstanding at LIBOR (London InterBank Offered Rate), commencing on the 16<sup>th</sup> calendar day after the due date.
- 2.4 Upon non-payment of the Variable Charges by sixty (60) days after due date the Grantor shall be at liberty to terminate this Agreement and institute legal proceedings to recover all interest, penalties, fees and amounts outstanding.
- 2.5 The Grantor's Account Name and number at a branch of a commercial bank at Lusaka into which payments for the Fixed and Variable Charges are to be regularly made by the Concessionaire shall

be identified by the Department of National Parks and Wildlife on the day following the signing of this Agreement.

### **3. IT IS HEREBY AGREED ON THE FOLLOWING RIGHTS AND OBLIGATIONS OF THE CONCESSIONAIRE**

#### **3.1 Rights of the Concessionaire**

- 3.1.1 The Concessionaire shall have the right, subject to compliance with the provisions and conditions set out in this Agreement, to hold peacefully and enjoy the Site as delineated and shown on the sketch plan in Schedule 1 annexed hereto and thereon colored red during the term of this Agreement without interruption by the Grantor or any other person representing the Grantor for carrying out tourism services in accordance with its Business Plan in Schedule 3 hereto annexed and forming an integral part of this Agreement.
- 3.1.2 The Concessionaire shall have complete control over its business including pricing, policy, acceptable tourist services offered, use and allocation of its resources, advertising and promotions, the hiring, promoting and discharge of labor and the setting of reasonable rates of employee remuneration in accordance with prevailing employment and industrial relations laws.
- 3.1.3 The Concessionaire shall have the right to pledge, transfer, sell or otherwise dispose of its rights under this Agreement subject to the Grantor's approval subject to the provisions and conditions set out in paragraphs 4.1.5, 5.5 and 5.6.

#### **3.2 Obligations of the Concessionaire**

- 3.2.1 The Concessionaire shall establish business practices and procedures intended to incorporate sustainable development strategies into the core management function of its business and to identify and implement key actions needed to bring about sustainable tourism in the park. In this respect, the Concessionaire's main priority obligations in promoting sustainable tourism shall be:
  - a) To ensure minimization, reuse and recycling of all waste;
  - b) to promote energy efficiency, conservation and management;
  - c) to efficiently manage the fresh water supply;
  - d) to efficiently and effectively manage all types of waste;
  - e) to minimize the use of hazardous substances;
  - f) to rationalize the use of all forms of transport within the national park ecosystem;
  - g) to involve staff, customers and communities in environmental issues as these affect the area;

- h) to design all structures, facilities and amenities for sustainability; and
  - i) to establish long-term partnerships for sustainable development with the Grantor and other stakeholders so as to enhance the continued biodiversity of the area.
- 3.2.2 The Concessionaire shall affect such capital investments, preventive maintenance, repairs, replacements and other developments as are stipulated in the Attached Plans in accordance with the time schedule indicated in these Attached Plans subject to the provisions and conditions set out herein. The Concessionaire will maintain a current list of all improvements, equipment and fixed assets that are assigned to the Site and will ensure that all such assets remain in good condition at all times. All such assets, both fixed and moveable, shall be for the exclusive use of the tourism concession business conducted at the Site. Such capital investments together with all assets required to be invested and or made at the Site by the Concessionaire by virtue of and in accordance with the provisions of this Agreement will be assigned to the Grantor on the termination or at the end of this Agreement.
- 3.2.3 The Concessionaire shall manage and operate a tourist facility at the Site and all its associated activities in a manner consistent with hospitality and safari operators' standards acceptable to the Grantor or his agents and in accordance with the Park Regulations and/or Management Plan and the provisions and conditions set herein and relevant legislation.
- 3.2.4 The Concessionaire shall be required to take steps to engage and train manpower especially from surrounding communities and otherwise to invest in the training and development of Malawians, as referred to in the attached Business Plan.
- 3.2.5 The Concessionaire shall undertake, at its own cost, such preventive maintenance, repairs and replacements as are necessary to ensure that the services at the Site are provided in accordance with the requirements of paragraphs 4.1.1 and 3.2.2 whether such preventive maintenance, repairs and replacements are specified in the Attached Plans or not.
- 3.2.6 The Concessionaire shall apply for and use its best efforts to obtain, maintain and pay for the tourist facility authorizations, licenses, fees and permits required in connection with the development, management and operation of the hospitality, recreational education and leisure activities at the Site at its cost. In this regard, the Concessionaire is under the obligation to make regular returns to the Grantor or his agents and to pay taxes as required by the Commissioner General of the Malawian Revenue Authority and the Registrar of Companies.
- 3.2.7 The Concessionaire shall purchase insurance in its own name to cover all liabilities in respect of damage or loss which may be suffered by any persons by reason of or arising directly out of the use of the Site and the tourist facility and its ancillary services therein and to keep the Grantor indemnified against all such liability.
- 3.2.8 The Concessionaire shall not cause or permit to be done on the Site any act, which may cause annoyance to the Grantor or his agents or to the general public.

- 3.2.9 The Concessionaire shall submit to the Grantor for his approval plans to undertake any material alterations to the Site, which are not reflected in the Attached Plans. The Grantor shall respond in accordance with the provision set out in paragraphs 3.2.1 and 3.2.3.
- 3.2.10 The Concessionaire shall submit to the Grantor for his approval any plans to pledge, transfer, sell or otherwise dispose of his rights under this Agreement, which approval must be obtained before such plans can be effected. Approval in this respect shall not be unreasonably withheld by the Grantor and response to the request for approval must be within forty-five days (45) of receipt of such request.
- 3.2.11 The Concessionaire shall submit to the Grantor reports, which shall include:
- a) the status of progress in implementing the obligations set out in the Attached Plans and as provided for under paragraph 3.2.2 which reports shall be submitted half-yearly or such other period as set out by the Grantor;
  - b) details of the monies paid for board, lodging and ancillary tourist services provided each month, in accordance with which the payments under paragraph 2.1 are calculated, which reports shall be submitted quarterly;
  - c) estimates of charges for board, lodging and ancillary tourist services to be provided during the forthcoming half year, which shall be submitted by the last day of January and July, in accordance with which payments under paragraph 2.1 shall be estimated;
  - d) such other information as may reasonably be required from time to time.
- 3.2.12 If the Concessionaire fails to submit reports and returns as required under paragraph 3.2.11, the Grantor shall proceed to make an estimate of what he considers the gross business turnover and what it considers the occupancy to be for the purposes of applying the provisions of paragraph 2.1.2 which estimate shall be final. In addition, the Grantor may impose such penalties and interest charges to be levied upon the Concessionaire for non-compliance with the provisions of paragraph 3.2.11.
- 3.2.13 The Concessionaire shall maintain sufficient records on the tourist business and retain these for a minimum period of four (4) years to enable the Grantor to verify Variable Charge liabilities. Such records must provide for inspection, evidence of cancelled bookings and reasons for varying or altering agreed published tariffs as provided for under paragraph 3.2.12. Such records or returns shall also show when travel trade promotional discounts have been offered by way of business promotion.
- 3.2.14 Unless otherwise specified and agreed, the staff complement present at the site overnight should not at any time exceed 1.5 staff per tourist bed. The Concessionaire will be charged a fee of US\$30 per month or part thereof for each additional staff member over and above the set level as stipulated in this Agreement.

- 3.2.15 All staff shall be registered with the Grantor, and shall be afforded free entry and accommodation at the site by means of the appropriate permit(s). Any persons not so registered or not in possession of a valid permit provided by the Grantor shall be liable for full payments as stipulated in paragraph 2.1.2 of this Agreement.
- 3.2.16 The Concessionaire shall apply to the Grantor for permission to undertake any activity or form of business which is not connected with the main business of the tourist facility and which is not contained in the Attached Plans and the Grantor may grant permission provided such activity or form of business shall promote the objectives of sustaining the park as provided for in paragraph 3.2.2.
- 3.2.17 The Concessionaire shall always observe and act in accordance with the Wildlife Act, the Tourism Act, the Hotels Act and respective subsidiary legislation and respective subsequent legislation and the provisions of the Park Regulations and/or Management Plan and any other relevant legislation.
- 3.2.18 The Concessionaire shall commence commercial operations according to the Attached Plans immediately upon signing this Agreement and accept an obligation to make both fixed and variable payments in accordance with paragraph 2.1 from the date of signing this Agreement.
- 3.2.19 The Concessionaire shall take steps to reduce to a minimum the intrusion of the Site and its structures into the peaceful and tranquil nature of the Park, specifically by incorporating building designs, colors and lighting techniques that are unobtrusive so as to minimize the visual and audio impact of the Site on other users of the Park.
- 3.2.20 In the event of the Concessionaire violating the Laws of Malawi which are relevant and material to the operations of a tourist and hospitality amenity at the Site, the Grantor reserves the right to take legal means to terminate this Agreement.

#### **4. IT IS HEREBY AGREED ON THE FOLLOWING RIGHTS AND OBLIGATIONS OF THE GRANTOR**

##### **4.1 Rights of the Grantor**

- 4.1.1 The Grantor shall have the right, in accordance with the Wildlife Act, the Hotels Act, the Companies Act, any respective subsidiary legislation and respective subsequent legislation and provisions of the Park Regulations and/or Management Plan to specify minimum acceptable standards which must be adhered to regarding but not restricted to grounds, buildings, moveable furniture, furnishings, equipment, vehicles, vessels, crafts, appliances and utensils.
- 4.1.2 Provided that the Grantor has given seven days notice in writing to the Concessionaire of the intention to carry out an inspection and provided such action does not unreasonably disrupt the business operations at the Site, the Grantor shall have the right to enter the Site

- a) to appraise the business operations and development of the tourist facilities at the Site for the purposes of, but not limited to, determining revised Variable Charges in accordance with paragraph 2.1.2.
  - b) to inspect the physical premises; and
  - c) to examine relevant business records.
- 4.1.3 The Grantor shall require the Concessionaire to carry out preventive maintenance, repairs and replacement in accordance with paragraph 4.1.1 and to require the Concessionaire to pay for such maintenance, repair and replacement following an inspection within thirty (30) days of serving formal notice after such inspection. If evidence of such preventive maintenance, repairs or replacement (or evidence of payment for such preventive maintenance, repairs or replacement) is not submitted within the stipulated period, the Grantor may effect such preventive maintenance, repairs or replacement as required of the Concessionaire, and charge all related costs to the Concessionaire.
- 4.1.4 Failure by the Concessionaire to pay for such preventive maintenance, repairs and replacement as affected by the Grantor as provided for under paragraph 4.1.4 may lead to the termination of this Agreement in accordance with the provisions and conditions contained in paragraphs 5.2, 4.1.2 and 4.1.3.
- 4.1.5 The grantor shall have the right to refuse consent for the Concessionaire to undertake business operations at the Site which are not connected with the main business of the tourist facility, or which are contrary to the Wildlife Act, the Tourism Act, the Hotels Act and respective subsidiary legislation and respective subsequent legislation or which are at variance with the principles of sustainable tourism development and or the provisions of the Park Regulations and/or Management Plan.
- 4.1.6 The Grantor or his agents shall have the right to have submitted for his approval signs and notices to be placed within the environs of the Site as well as at entry points to the Park, and shall respond within forty-five days (45) of receipt of such application.
- 4.1.7 The Grantor reserves the right to review and, if necessary, change the fees charged with respect to park use and entry fees, park-based vehicle fees, firewood collection and additional staff as referred to in paragraphs 2.1.2, 2.1.4 and 3.2.14. This will be done in consultation with the Concessionaire and, where affected, will be implemented with due notice of one calendar year being given.

## **4.2 Obligations of the Grantor**

- 4.2.1 The Grantor shall endeavor to establish management systems and procedures incorporating sustainable development considerations in its decision-making process and to those actions necessary to bring about sustainable tourism development in the Park from time to time. In this

respect the Grantor's main priority areas towards enhancing sustainable tourism development shall be:

- a) to periodically assess the capacity of the existing regulatory economic and voluntary framework to bring about sustainable tourism;
- b) to regularly evaluate the economic, social, cultural and environmental implications of wildlife resource management in the area;
- c) to spearhead timely training, education and public awareness campaigns from time to time;
- d) to plan for sustainable tourism development appropriate to the ecology of the area;
- e) to collaborate with the Concessionaire in the design of new tourist products with sustainability at their core;
- f) periodically to measure progress in achieving sustainable development;
- g) to establish long-term partnerships with the Concessionaire and other key stakeholders for sustainable development so as to enhance the continued biodiversity of the area;
- h) to undertake appropriate and effective anti-poaching activities; and
- i) to maintain Park road network in conjunction with the Concessionaire as detailed in Schedule 3 of this Agreement.

4.2.2 The Grantor shall respond to applications by the Concessionaire to repair, develop or otherwise make alterations to the said Site which are not included in the Attached Plans within forty-five (45) days of receipt of such applications provided that such applications are not intrinsically in breach of standing regulations of the Park Regulations and/or Management Plan in force at the time. Failure to respond within the specified time shall be deemed to be approval unless a reasonable explanation for a delayed response is advanced soon thereafter.

4.2.3 The Grantor shall respond to an application by the Concessionaire to renew this Agreement within forty-five (45) days of receipt of such application.

4.2.4 The Grantor shall respond to application by the Concessionaire to pledge, transfer, sell or otherwise dispose of its rights under this Agreement within forty-five (45) days of receipt of such application always provided the proposed Concessionaire is able to fulfill the agreed schedule of activities in the Attached Plans.



- 4.2.5 The Grantor shall respond to any application by the Concessionaire to undertake any activity or form of business intended to promote sustainable tourism development which is not contained in the Attached Plans, within forty-five (45) days of receipt of such application.
- 4.2.6 The Grantor shall issue formal acknowledgement of receipt for all direct payments made by the Concessionaire to the Grantor in accordance with paragraph 2.1 above. Acceptance of stipulated payments as deposited in designated branches of commercial banks shall constitute sufficient evidence of acknowledged receipt of such payments.
- 4.2.7 The Grantor shall issue formal acknowledgement that all preventive maintenance, repairs and replacements required in accordance with paragraph 4.1.4 have been satisfactorily discharged within forty-five (45) days of the Concessionaire demonstration to the Grantor that such preventive maintenance, repairs and replacements have been affected.
- 4.2.8 The Grantor undertakes that it shall not build or allow others to build permanent structures or carry on a similar business within 5-kilometre radius of the outside perimeters of the Site established as provided in the Park Regulations and/or Management Plan for the duration of this Agreement.

## **5. GENERAL TERMS OF THE CONCESSION**

- 5.1 This Agreement bestows no land rights or ownership rights whatsoever on the Concessionaire.
- 5.2 The Concessionaire shall have the option to renew this Agreement for an equal Term subject to satisfactory compliance with the provisions and conditions contained herein and also subject to the submission of business development and operating plans which are satisfactory to the Grantor, which plans shall form an integral and enforceable part of the renewed Agreement.
- 5.3 Renewal of this Agreement shall be on first refusal basis subject to re-negotiation of the rights and obligations of the Grantor and the Concessionaire.
- 5.4 Should the Concessionaire wish to renew this Agreement, the Concessionaire shall commence negotiations at least twelve (12) months before the termination on the initial Term and the rates applicable shall be market related.
- 5.5 In the event the Concessionaire does not wish to renew this Agreement, the Concessionaire shall inform the Grantor of such a decision in writing not less than one calendar year before the termination date. Failure to do so shall render the Concessionaire liable to such penalty as may be determined and gazetted by the Minister from time to time.
- 5.6 Should the Concessionaire not wish to renew this Agreement, the Concessionaire shall deliver to the Grantor all developments and infrastructure constructed at the Site and corresponding movables thereon in a manner provided for in paragraph 5.14

- 5.7 This Agreement may be transferable to any other potential Concessionaire with the prior written consent of the Grantor, which consent shall not be unreasonably withheld from the Concessionaire, always providing that the terms set out herein, including the provisions and conditions contained in the Attached Plans which form an integral part of this Agreement are fully adhered to.
- 5.8 Any approved pledge, transfer, sale or otherwise disposal of rights under this Agreement shall not be construed to signify a renewal of this Agreement with the proposed Concessionaire and shall not affect the agreed initial or subsequent Term of the Agreement signed with the Concessionaire.
- 5.9 This Agreement shall be construed in accordance with the Laws of Malawi and shall relate to the said Site as shown on the Site sketch annexed hereto in Schedule 1.
- 5.10 In this Agreement it is understood that wherever consent is required from one party by the other, such consent shall not be unreasonably withheld.
- 5.11 Any dispute arising under or out of this Agreement shall be settled in accordance with the Arbitration Act of the Laws of Malawi.
- 5.12 Where the Concessionaire's activities are seriously deficient in terms of his obligations under this Agreement, the Grantor shall have the right to enforce the provisions and conditions contained herein by any appropriate legal means at his disposal and/or to terminate this Agreement.
- 5.12.1 Should the Grantor decide to terminate this Agreement, it is herein expressly agreed and understood that, upon receiving notice to vacate, the Concessionaire will immediately and unconditionally vacate the Site and hand over all operations and records in a good and businesslike manner to the Grantor.
- 5.12.2 The Concessionaire may contest such an order to vacate under Clause 5.13, but only after having vacated the Site and proceed with arbitration as allowed for under paragraph 5.11.
- 5.13 This Agreement shall not in any way be affected nor shall any party hereto be liable for any failure or delay in the performance of any undertaking or condition herein if such failure or delay is due to an act of God, including but not limited to fire, flood, damage by elements, perils of sea, air accident, strike or labor disorder, act of foreign or domestic *de jure* or *de facto* government, whether by law, order or legislation, decree, rule, regulation or otherwise revolutionary civil disturbances, or declared or undeclared act of war or interference or action caused beyond the parties control.
- 5.14 Upon the commencement of this Agreement all serviceable movables, including game viewing and supply vehicles subsisting at the Site and vested in or held or enjoyed by the Department of National Parks and Wildlife and which it can be established is presently controlled by the Grantor, shall be turned over to be held or enjoyed by the Concessionaire and therefore accountable to the Concessionaire during the Term and at the conclusion of the Agreement. The Concessionaire is

also accountable for all replacement and additional movables through the life of the Agreement and will deliver same to the Grantor at the termination of this Agreement.

- 5.15 The Grantor shall indemnify the Concessionaire against all actions, suits proceedings, claims, demands costs and expenses whatsoever which may be taken or made in respect of issues arising prior to the commencement of this Agreement.
- 5.16 It shall be open to either party to propose any reasonable change or amendment to this Agreement which shall be instituted subject to the agreement of the other party.
- 5.17 This Agreement shall allow for the re-siting of the Lodge in case of any cause or causes beyond the parties' control, including but not limited to fire, flood, air accident or act of God.
- 5.18 Any notice, statement or demand given under this Agreement and as required under paragraphs 3.2.5, 3.2.8, 3.2.9, 3.2.10, 3.2.11, 3.2.12, 3.2.15, 4.2.3, 4.2.4, 4.2.5, 4.2.6 and 4.2.7, which relate to obligations of both Grantor and Concessionaire, shall be so communicated in writing and sent out by registered post, facsimile transmission or hand delivered as the case may be to either the Grantor or the Concessionaire at the addresses given below:

**Grantor**

**The Director**

Department of National Parks and Wildlife  
Old French Embassy Building  
LILONGWE

Concessionaire

The Managing Director  
*[Name of Tour Company]*  
*[Office Address of Tour Company]*

- 5.19 The following appendices are considered as integral to this Agreement and therefore form part of it:
- a) Schedule 1: Site Plan and Description (attached hereto)
  - b) Schedule 2: Payments of Fixed Charges (attached hereto)
  - c) Schedule 3: The Business Plan for the Lodge proposed by the Concessionaire to be implemented as agreed by the Concessionaire (attached hereto);
  - d) The Park Regulations and/or Management Plan (incorporated by reference); and
  - e) The United Nations Framework Convention on Biological Diversity as endorsed by the World Tourism Organization, the World Travel & Tourism Council and the Earth Council, with obligations for both Grantor and Concessionaire (incorporated by reference).

**In WITNESS whereof**, the duly authorized representatives of the parties have hereunder set their hands and seals on the day and year as indicated below.

Signed by: \_\_\_\_\_ Name: \_\_\_\_\_

on behalf of the \_\_\_\_\_ Address: \_\_\_\_\_

***Government of the Republic of Malawi***

\_\_\_\_\_  
\_\_\_\_\_

in the presence of

\_\_\_\_\_

***Position:*** \_\_\_\_\_

***Name:*** \_\_\_\_\_

***Witness:*** \_\_\_\_\_

\_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Position: \_\_\_\_\_

\_\_\_\_\_

Signed by: \_\_\_\_\_ Name: \_\_\_\_\_

on behalf of \_\_\_\_\_ Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

***[Name of Tour Company]***

\_\_\_\_\_

in the presence of

\_\_\_\_\_

***Position:*** \_\_\_\_\_

***Name:*** \_\_\_\_\_

***Witness:*** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Position:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# **SCHEDULE 1**

## **SITE PLAN**

## SCHEDULE 2

### PAYMENT SCHEDULES FOR FIXED CHARGES

*[Name of Camp]*

**(16-bed, 6-month season camp expanding to 24-beds in second year)**

| Year  | Payment Amounts (US\$)<br>and due dates |          | Total Annual<br>Payment |
|---|---|----------|-------------------------|
|   | 1 January                               | 1 July   | (US\$)                  |
| 1999  | 3,840.00                                | 3,840.00 | 7,680.00                |
| 2000  | 5,760.00                                | 5,760.00 | 11,520.00               |
| 2001  | 5,904.00                                | 5,904.00 | 11,808.00               |
| 2002  | 6,051.60                                | 6,051.60 | 12,103.20               |
| 2003  | 6,202.89                                | 6,202.89 | 12,405.78               |
| 2004  | 6,357.96                                | 6,357.96 | 12,715.92               |
| 2005  | 6,516.91                                | 6,516.91 | 13,033.82               |
| 2006  | 6,679.83                                | 6,679.83 | 13,359.67               |
| 2007  | 6,846.83                                | 6,846.83 | 13,693.66               |
| 2008  | 7,018.00                                | 7,018.00 | 14,036.00               |
| 2009  | 7,193.45                                | 7,193.45 | 14,386.90               |
| 2010  | 7,373.29                                | 7,373.29 | 14,746.57               |
| 2011  | 7,557.62                                | 7,557.62 | 15,115.24               |
| 2012  | 7,746.56                                | 7,746.56 | 15,493.12               |
| 2013  | 7,940.22                                | 7,940.22 | 15,880.45               |
| <b>Total amount payable over<br/>Initial Term</b> |   |          | <b>197,978.34</b>       |

2.5 percent annual increment from 1 January 2001

\$80 per bed per month for six month season (1999 only) = \$7,680 per annum

\$80 per bed per month for six month season (2000 onwards) = \$11,520 per annum

**SCHEDULE 3**  
**BUSINESS PLAN**



## **SCHEDULE 4**

### **OTHER SITE-SPECIFIC CONDITIONS RELATED TO THIS AGREEMENT**

1. Subject to site selection approved by the Grantor, the Concessionaire will be allowed to establish and use up to two eight-bed bush camps within the Park. Fixed charges for the bush camps will be negotiated separately. It is understood that bush camps within the Park may be re-sited from time to time in response to changing environmental conditions.
2. The park warden will allow the Concessionaire to use sand and gravel from within the Park without charge, under specific direction.
3. Notwithstanding the requirement in *inter alia* paragraphs 2.1.3 and 5.14 that all site assets be handed over to the Grantor at the termination of this Agreement, the Concessionaire will be allowed to retain personal assets as may be listed in the separate inventory as reviewed and approved by the Grantor.

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